The State Of Uttar Pradesh vs Kaushaliya And Others on 1 October, 1963

Equivalent citations: 1964 AIR 416, 1964 SCR (4)1002

Bench: P.B. Gajendragadkar, K.N. Wanchoo, J.C. Shah, Raghubar Dayal

PETITIONER:
THE STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
KAUSHALIYA AND OTHERS

DATE OF JUDGMENT:
01/10/1963

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
SHAH, J.C.
DAYAL, RAGHUBAR

CITATION:
1964 AIR 416 1964 SCR (4)1002
CITATOR INFO :
F 1978 SC 771 (22)

ACT:
Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956), s. 20-"On receiving information", meaning of-Whether information could be from any source.
Constitution of India, Art. 14-Whether Suppression of Immoral Traffic in Women Act, 1956, s. 20 gives Magistrate uncandlised power-Article 19-Whether s. 20 a reasonable restriction.

HEADNOTE:
The respondents in the above 6 appeals are alleged to be prostitutes carrying on their trade in Kanpur. On receiving information from the Sub-Inspector of Police who is not a Special Police Officer, the City Magistrate issued notices to the respondents under s. 20(1) of the Suppression of

Immoral Traffic in Women and Girls Act, 1956 to show cause why they should not be required to remove themselves from the place where they were residing. The respondents filed their objections claiming that the proceedings were not legally maintainable. The Magistrate repelled the objections. Their revision petitions were dismissed by the Additional Sessions Judge. The High Court allowed their revision on the ground that s. 20 of the Act offended Arts. 14 and 19(1)(d)(e) of the Constitution of India. The State appealed to this Court on certificates granted by the High Court.

Before this Court it was contended that the information received by the Magistrate must be information received from a special police officer designated under s. 13 of the Act. The next Contention was that in as much under s. 20 the Magistrate acted in his executive capacity, his powers were uncanalized, he is conferred with power capable of discriminating between prostitute and prostitute and he could interfere on flimsy grounds in the lives of respectable woman and that the section offended against Art. 14. It was further contended that s. 20 imposed an unreasonable restriction on girls and women leading a life of prostitution and hence it violated Art. 19(1)(d) and (c).

Held : (i) If the Legislature intended to confine the expression "information" only to that given by a special police officer, it would have specifically stated so in the section. The omission is a clear indication that a particular source of information is not material for the application of the section. Giving the rational meaning to the expression "on receiving information" it is dear that information may be from any source.

(ii)The Act discloses a clear policy affording a real guidance for the Magistrate to decide the two questions which he is called upon to adjudicate under s. 20 of the Act. He functions as a court and decides the said two questions after giving full opportu-

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nity to the alleged prostitute to respresent her case and examine her evidence. His decision is subject to revision by the Sessions Court or the High Court as the case may be. In the circumstances it is not possible to say that uncanalized power is conferred on the Magistrate as an executive authority to decide the fate. of an alleged prostitute in an arbitrary manner.

(iii) It is well settled that Art. 14 does not prohibit reasonable classifications for the purpose of legislation and a law will not infringe Art. 14 if the classification is founded on an intelligible differentia and the said differentia has rational relation to the object to be achieved by the said law. There are pronounced and real difference between a woman who is a prostitute and one who is not and between a prostitute who does not demand in public interest any restriction on her movements and a

prostitute whose action in public places call for the imposition of restriction on her movement and even deportation. The difference between these classes of prostitutes has a rational relation to the object sought to be achieved by the Act. Section 20 in order to prevent moral decadence in a busy locality, seeks to restrict the movements of the second category of prostitutes or to deport such of them as the peculiar methods of their operation in an area may demand. Section 20 therefore does not offend Art. 14.

Begum State, A.I.R. 1963 Bom. 17 and Shama Bat v. State of U. P. A.I.R. 1959 All 57.

(iv) The reasonableness of a restriction depends upon the value of life in a society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree land urgency of the evil sought to be controlled and similar others. 'The vice of prostitution has to be controlled and regulated and one of the objects of the Act is to control the' growing evil of prostitution in public places. The restrictions placed by s. 20 are certainly in the interest of the general public and as the imposition of the restriction is done through a judicial process on the basis of a clearly disclosed policy the said restrictions are reasonable.

Chintaman Rao v. State of Madhya Pradesh, [1950] S.C.R. 759 and State of Madras v. V. G. Row, [1952] S.C.R. 597.

(v) Once it is held that the activities of a prostitute in a particular area having regard to the conditions obtaining therein, are so subversive of public morals and so destructive of public health that it is necessary in public interest to deport her from that place, them is no reason why the restriction should be held to be unrea sonable. The decision of the Bombay High Court in Begum v. State, is not correct to the extent it holds that the restriction under s. 20 encroach upon the fundamental right guaranteed under Art 19(1)(d) and (e). Those are reasonable restrictions imposed in 'public. interest and do not infringe the fundamental rights under Art. 19(1)(d) & (e) of the Constitution.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION Criminal Appeals Nos. 21 to 26 of 1962.

Appeals from the judgment and order dated November 17, 1961, of the Allahabad High Court in Criminal Revision nos. 322, 323, 324, 611, 612 and 613 of 1961.

C. B. Agarwala and C. P. Lal, for the appellant (in all the appeals).

J. P. Goyal, for the respondents (in Cr. A. Nos. 21-24 and 26 of 1962)-

October 1, 1963. The Judgment of the Court was delivered by SUBBA RAO J.-These six appeals filed by certificates granted by the High Court of judicature at Allahabad raise the question of the vires of s. 20 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956), hereinafter called the Act.

The relevant facts may be briefly stated. The respondents are alleged to be prostitutes carrying on their trade in the City of Kanpur. On receiving information from the Sub- Inspector of Police, who is not a Special Police Officer, the City Magistrate, Kanpur, issued notices to the respondents under s. 20(1) of the Act to show cause why they should not be required to remove themselves from the places where they were residing and be prohibited from re-entering them. The respondents received the notices and filed objections claiming that the proceedings were not legally maintainable. The learned City Magistrate repelled the said objections. Against the orders of the Magistrate the respondents went up in revision to the Additional Sessions Judge Kanpur but the same were dismissed. Thereafter the respondents preferred revisions to the High Court of judicature at Allahabad and the said High Court allowed the revision petitions and set aside the proceedings pending against the respondents in the Court of the City Magistrate, Kanpur. The High Court held that s. 20 of the Act abridged the fundamental rights of the respondents under Art. 14 and sub-cls. (d) and (e) of Art. 19(1) of the Constitution. After obtaining certificates for leave to appeal from the High Court, the present appeals have been preferred by the State.

As the argument turns upon the provisions of s. 20 of the Act, it will be convenient at the outset to read it :

> Section 20. (1) A Magistrate on receiving information that any woman or girt residing in or frequent-
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> ing any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such woman or girl requiring her to appear before the Magistrate and show cause why she should not be required to remove herself from the place and be prohibited from re-entering it.
>
> (2) Every notice issued under subsection (1) shall be accompanied by a copy of the record aforesaid and the copy shall be served alongwith the notice on the woman or girl against whom the notice is issued.
>
> (3) The Magistrate shall, after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the woman or girl an opportunity of adducing evidence, take such further evidence as he thinks fit and if upon such inquiry it appears to him that such woman or girl is a prostitute and that it is necessary in the interests of the general public that such woman or girl should be required to remove herself therefrom and be prohibited from re-entering the same, the Magistrate shall, by order in writing communicated to

> the woman or girl in the manner specified therein, require her after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove herself from the place to such place whether within or without the local limits of Ms jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit her from re-entering the place without the permission in writing of the Magistrate having jurisdiction over such place.

The first question raised is whether the information received enabling a Magistrate under s. 20 of the Act to make the enquiry provided thereunder should be only from a special police officer designated under s. 13 of the Act. Section 13 of the Act says that there shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area. The post of special police officer is created under the Act for dealing with offences under the Act, whereas s. 20 does not deal with offences. That apart, the expression used in s. 20, namely, on receiving information" is not expressly or by necessary implication limited to information received from a special police officer. If the Legislature intended to confine the expression "information" only to that given by a special police officer, it would have specifically stated so in the section. The omission is a clear indication that a particular source of information is not material for the application of the section. There is an essential distinction between an investigation and arrest in the matter of offences and information to the Magistrate : the former, when dealing with women, has potentialities for grave mischief and, therefore, entrusted only to specific officers, while mere giving of information 'Would. not have such consequences particularly when" as we would indicate later, the information received by the Magistrate would only start the machinery of a judicial enquiry. We therefore, hold, giving the natural meaning to the expression "on receiving information", that' "information" may be from any source.

The next question is whether s.20 of the Act offends Art. 14 of the Constitution. It is stated that the power conferred on the Magistrate under s. 20 of the Act is an uncanalized and uncontrolled one, that he acts thereunder in his executive capacity, that the said section enables him to discriminate between prostitute and prostitute in the matter of restricting their movements and deporting them to places outside his jurisdiction, and that it also enables him on flimsy and untested evidence to interfere with the lives of respectable women by holding them to be prostitutes and, therefore, it violates Art.14 of the Constitution. So stated, the argument appears to be plausible, but a closer scrutiny of the section and the connected sections not only, reveals a clearcut policy but also the existence of, effective checks against, arbitrariness. ; Let us At the outset scrutinize the. provisions of the Act. The preamble of the Act shows that the Act was made to provide in pursuance of the Intentional Convention signed, at) New York on May 9, 1950, for suppression of immoral traffic in women and girls. The short title of the Act says that the Act may be called "The Suppression of Immoral Traffic in Women and Girls Act, 1956". Though the preamble as well as the short title shows that the Act was intended to prevent immoral traffic in women and girls, the other sections of the Act indicate that it was not the only purpose of the Act. Section 2(b) defines "girl" to mean a female who has not completed the age of twenty-one, s. 2(1), "woman" to mean a female who has completed the age of 21 years, s. 2 (e), "prostitute" to mean a female who offers her body for promiscuous sexual intercourse for lure, whether in money or in kind, and s. 2(f), "prostitution" to

mean the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind. There are provisions in the Act for punishing men who run brothels and who procure girls and women for prostitution, for punishing women and girls who seduce or solicit for the purpose of Prostitution in public places, for placing the rescued women and girls in detention in protections in protection home for closure of brothels and eviction of offenders from premises, for restricting the movements of prostitutes and even for deporting them to places outside the Jurisdiction of the Magistrate, Section 7(1) provides for the punishment of a prostitute, if she carries on prostitution in any premises Which are within a distance of two hundred yards or any place of public religious worship, educational institution, hostels, hospitals, nursing home or such other public place or any kind notified in that behalf by the Commissioner of- Police or the District Magistrate, as the casec it may be. Section 8 prohibits seducing or soliciting for purpose of prostitution in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not, and makes such soliciting or seducing an offence under the Act. Section 18 provides for the closure of brothels and eviction of offenders from the premises, if such premises are within a distance of two hundred yards from a public place mentioned in s. 7(1) and are used or run as a brothel by any person or used by prostitutes for carrying on their trade. The Act was conceived to serve a public social purpose, viz., to suppress immoral traffic in women and girls, to rescue fallen women and girls and to prevent deterioration in public morals. The Act clearly defines a "prostitute", and gives definite indications from which places prostitutes should be' removed or in respect whereof their movements should be restricted.

With this policy in mind, let us now give close look to the provisions of s. 20(1) of the Act. The following procedural steps are laid down in s. 20 of the Act: (1) the enquiry is initiated by a Magistrate on his receiving the requisite information that a woman a girl is a prostitute; (2) he records the substance of the information; (4) he sends, along with the notice, a copy of the record; (5) he shall give the woman or girl an opportunity to adduce evidence on two points, namely, (i) whether she is a prostitute, and

(ii) whether in the interests of the general public she should be required to remove herself from the place where she is residing or which she is frequenting; (6) the Magistrate shall give his findings on the said questions, and on the basis thereof, he makes the appropriate order; and (7) the disobedience of the order entails punishment of fine.

It is argued that the enquiry is not in respect of "of- fences", though disobedience of an order made thereunder may entail punishment of fine, and, therefore, the order is one made in an administrative capacity. The expression "Magistrate" has been defined to mean a District Magistrate, a Sub-Divisional Magistrate, a Presidency Magistrate or a Magistrate of the first class specially empowered by the State Government, by notification in the Official Gazette, to exercise jurisdiction under this Act. The definition shows that special jurisdiction is conferred upon a Magistrate of comparatively high status who can safely be relied upon to discharge the onerous and delicate duties inherent in such jurisdiction. The jurisdiction under s. 20 is not conferred on such a Magistrate as a persona designata but is to be exercised by him in his capacity as a Magistrate functioning within the limits of his territorial juris- diction. The procedure prescribed thereunder,

which we have analysed earlier, approximates, as nearly as possible, to that of a judicial enquiry. The enquiry starts on infor- mation; notice, along with a copy of the record, is given to the alleged prostitute; she is given an opportunity to adduce evidence which necessarily implies a right to have a public enquiry, to engage an Advocate, to ask for the examination of the informant or informants and to cross- examine them and to adduce her evidence, both oral and documentary. The Magistrate, on the basis of the evidence, decides the aforesaid two questions, and makes a suitable order indicated in the section. The right with respect whereof the jurisdiction is exercised is an important one. It is a fundamental right of personal liberty. No right can be more important to a person than the right to select his or her home and to move about in the manner he or she likes. Even depraved woman cannot be deprived of such a right except for good reasons. When the Legislature conferred Jurisdiction on a Magistrate to decide the question of imposing restrictions on such a right by following judicial procedure, it is reasonable to hold that it conferred jurisdiction on him as a court, unless the clear provisions of the Act compel us to hold otherwise. Indeed the analysis of the section earlier made negatives any intention to the contrary. The fact that the enquiry does not relate to an "offence " is not decisive of the question whether the Magistrate is functioning as a court. There are many proceedings under the Code of Criminal Procedure, such as those under ss. 133, 144, 145 and 488, which do not deal with offences but still it is never suggested that a Magistrate in making an enquiry in respect of matters thereunder is not functioning as a court. We therefore, hold that in the circumstances the Magistrate must be held to be acting as a court. If the Magistrate is acting as a court, as we have held he is, it is obvious that be is subject to the revisional jurisdiction conferred under ss. 435 and 439 of the Code of Criminal Procedure. The said sections confer ample authority on the courts mentioned therein to set right improper orders passed by a Magistrate in appropriate cases. The result of the discussion is that the Act discloses a clear policy affording a real guide for the Magistrate to decide the two questions which he is called upon to adjudicate under s. 20 of the Act. He func- tions as a court and decides the said two questions after giving full opportunity to the alleged prostitute to repre- sent her case and examine her evidence. His decision is subject to revision by the Sessions Court or the High Court, as the case may be. In the circumstances it is riot possible to say that uncanalised power is conferred on the Magistrate as an executive authority to decide the fate of an alleged prostitute in an arbitrary manner. The next question is whether the policy so disclosed offends Art. 14 of the Constitution. It has been well settled that Art. 14 does not prohibit reasonable classification for the purpose of legislation and that a law would not be held to infringe Art. 14 of the Constitution if the. classification is founded on an intelligible differentia and the said differentia has a rational relation to the object sought to be achieved by the said law. The differences between a woman who is a prostitute and one who is not certainly justify their being placed in different classes. So too, there are obvious differences between a prostitute who is a public nuisance and one who is not. A prostitute who carries on her trade on the sly or in the unfrequented part of the town or in a town with a sparse population may not be so dangerous to public health or morals as a prostitute who lives in a busy locality or in an overcrowded town or in a place within the easy reach of public institutions like religious an educational institutions. Though both sell their bodies, the latter is far more: dangerous to the public, particularly to the younger generation during the emotional stage of their life. Their freedom of uncontrolled movement in a crowded -locality or in the vicinity of public institutions not only helps to demoralise the public morals, but, what is worse, to spread diseases not only affecting the present generation, but also the future ones. Such trade in public may also lead to scandals and unseemly

broils. There are, therefore, pronounced and real differences between a woman who is a prostitute and one who is not, and between a prostitute, who does not demand in public interests any restrictions on her movements and a prostitute, whose actions in public places call for the imposition of restrictions on her movements and even deportation. The object of the Act, as has already been noticed is not only to suppress immoral traffic in women and girls, but also to improve public morals by removing. prostitutes from busy public places in the vicinity of religious and educational., tutions. The differences between these two- classes of stitutes have a rational relation to the object sought to be achieved by the Act. Section 20, in order to prevent moral decadence in a busy locality, seeks to restrict the movements of the second category of prostitutes and to deport such of them as the peculiar methods of their operation in area may demand.

judicial decisions arising under the Act and under analogous Acts were cited at the Bar. The question whether a particular provisions offends Art. 14 of the Constitution or not depends upon the provisions of the Act wherein that section appears. The decisions oil other Acts do not afford any guidance to decide the Vires of s. 20 of the Act. We shall, therefore, briefly notice the decisions which have a direct bearing on s. 20 of the Act.

A Division Bench of the Bombay High Court, in Begum v. State(1) bad to consider the same question now before us. It held that the provisions of s. 20 of the Act would not be bit by Art. 14 of the Constitution, though it held that the provisions of s. 20 of the Act which enable a Magistrate to direct a prostitute to remove herself from the place where she is residing to a place without the local limits of his jurisdiction was an unresonable restriction upon the fundamental right guaranteed under Art. 19(1)(d) and (e) of the Constitution. We agree with the High Court in so far as it held that the section does not offend Art. 14 of the Constitution, but we cannot accept the view expressed by it in respect of Art. 19(1)(d) and (e) thereof. We shall consider this aspect at a later stage.

In Shama Bai v. State of U. P. (2), Sabai J., though he dismissed the writ petition without giving notice to the other party, made some observations indicating his view that the said provision prima facie offends Art. 14 of the Constitution. For the reasons already stated by us, we do not agree with this view. We, therefore, hold that s. 20 of the Act does not infringe Art. 14 of the Constitution. Now coming to Art. 19(1)(d) and (e) of the Constitution, the question that arises is whether s. 20 of the Act imposes an unreasonable restriction on girls and women leading a life of prostitution. To state it differently, (1) A.I.R. 1963 Bom. 17.

(2) A.I.R. 1959 All. 57 does s. 20 of the Act impose reasonable restrictions on the exercise of the fundamental right of the prostitutes under Art. 19(1)(d) and (e) of the Constitution in the interests of the general public. Under Art. 19(1)(d) the prostitute has a fundamental right to move freely throughout the ter- ritory of India; and under sub-cl.(e) thereof to reside and settle in any part of the territory of India. Under s. 20 of the Act the Magistrate can compel her to remove herself from place where she is residing or which she is frequenting to places within or without the local limits of his jurisdiction by such route or routes and within such time as may be specified in the order and prohibit her from re- entering the place without his permission in writing. This is certainly a restriction on a citizen's fundamental right under Art. 19(1)(d) and (e) of the Constitution. Whether a restriction is reasonable in the interests or the general public cannot be answered on a priori

reasoning; it depends upon the peculiar circumstances of each case. Mahajan J., as he then was, speaking for the Court in Chintaman Rao v. The State of Madhya Pradesh(1) succinctly defined the expression "reasonable restrictions" thus :

> "The- phrase "reasonable restriction" connotes the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates."

A fairly exhaustive test to ascertain the reasonableness of a provision is given by Patanjali Sastri C.J. in The State of Madras v. V. G. Row(2). Therein the learned Chief justice observed thus :

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed) should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions (1) [1950] S.C.R. 759, 763.
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> (2) [1952]_ S.C.R. 597, 607.

imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

If we may say so, with respect, this passage summarized the law on the subject fully and precisely. The reasonableness of a restriction depends upon the values of life in a society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of the evil sought to be controlled and similar others. If in a particular locality the vice of prostitution isendemic degrading those who live by prostitutionand demoralising others who come into contact with them, the Legislature may have to impose severe restrictions on the right of the prostitute to move about and to live in a house 'of her choice. If the evil is rampant, it may also be necessary to provide for deporting the worst of them from the area of their operation. The magnitude of the evil and the urgency of the reform may require such drastic remedies. It cannot be gainsaid that the vice of prostitution is rampant in various parts of the country. There cannot be two views on the question of its control and regulation. One of the objects of the Act is to control the growing evil of prostitution in public places. Under s. 20 of the Act the freedom of movement and residence are regulated, but, as we have stated earlier, an effective and safe Judicial machinery is provided to carry out the objects of the Act. The said restrictions placed upon them are certainly in the interests of the general public and, as the imposition of the restrictions is done through a judicial process on the basis of a clearly disclosed policy, the said restrictions are clearly reasonable. It is said that the restrictions on prostitutes, though they may be necessary, are excessive and beyond the requirements the eradication of the evil demands. The movements of prostitutes, the argument proceeds, maybe controlled, but that part of the section which enables the Magistrate to deport them outside his jurisdiction is far in excess of the requirements. It is suggested that by consecutive orders made by various Magistrates, the point may be reached when a prostitute may be deported out of

India.

The second argument borders on fantasy. The first argument also has no force. If the presence of a prostitute in a locality within the Jurisdiction of a Magistrate has a demoralising influence on the public of that locality, having regard to the density of population, the existence of schools, colleges and other public institutions in that locality and other similar causes, we (lo not see how an order of deportation may not be necessary to curb the evil and to improve the public morals. Once it is held that the activities of a prostitute in a particular area, having regard to the conditions obtaining therein, are so subversive of public morals anti so destructive of Public health that it is necessary in public interest to deport her from that place, we do not see any reason why the restrictions should be held to be unreasonable. Whether deportation out of the jurisdiction of the Magistrate is necessary or not depends upon the facts of each case and the degree of the demoralizing influence a particular prostitute is exercising in a particular locality. If in a particular case a Magistrate goes out of the way and makes an order which is clearly disproportionate to the evil influence exercised by a particular prostitute, she has a remedy by way of revision to an appropriate court.

The Division Bench of the Bombay High Court in Begum v. State(1) no doubt held that the portion of s. 20 of the Act which enables the Magistrate to direct a prostitute to remove herself from the place where she is living to a place without the local limits of his jurisdiction unreasonably encroaches upon the fundamental right guaranteed under Art. 19(1)(d) and (e) of the Constitution and is, therefore, invalid. For the aforesaid reasons, we cannot agree with this view.

We, therefore, hold that the provisions of s. 20 of the Act are reasonable restrictions imposed in public interest within the meaning of s. 19(5) of the Constitution and, therefore, do not infringe the fundamental rights of the respondents under Art. 19(1)(d) and (e) thereof. In the result, the appeals are allowed. The orders of the High Court are set aside and those of the Additional Sessions judge are restored. The City Magistrate will now proceed with the enquiry on merits.

Appeals allowed.

(1) A.I.R. 1963 Bom. 17.

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