

**(2002) 02 SC CK 0016**

**In the Supreme Court Of India**

**Case No :** Criminal Appeal No. 245 Of 2002

Asstt. Commr. of C. Ex., Hyderabad

APPELLANT

Vs

Sabnife Power Systems Ltd.

RESPONDENT

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**Date of Decision :** 12-02-2002

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 24(8), 377(2)

**Citation :** (2002) 142 ELT 521 : (2002) 9 SCC 389

**Hon'ble Judges :** M. B. Shah, J; B. N. Agrawal, J

**Bench :** Division Bench

**Advocate :** Altaf Ahmad, Addl. Solicitor Genera, for the Appellant;

**Final Decision :** Partly Allowed

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## **Judgement**

1. Heard the learned Counsel for the parties.

2. Leave granted.

3. Against the judgment and order dated 7-1-1999 passed by the Special Judge for Economic Offences, Hyderabad, the complainant - Assistant Commissioner of Central Excise (Legal), Head Quarter Office, Hyderabad, preferred Criminal Appeal No. 428 of 1999 before the High Court of Andhra Pradesh at Hyderabad for enhancement of sentence imposed against the respondents. That appeal was dismissed by the High Court by holding that - (1)' appeal for enhancement of sentence u/s 377(2) Cr.P.C. could be filed by the Public Prosecutor duly authorised by the Central Government and Special Public Prosecutor appearing on behalf of the appellant fairly admitted that complainant was not empowered by the Central Government to file the appeal; and (2) appeal was not filed by the Public Prosecutor as contemplated u/s 377(2) Cr. P.C. but was filed by the Special Public Prosecutor.

4. For the first ground, the High Court has relied upon the decision rendered by this Court in Assistant Collector of Central Excise, Madras Vs. V. Krishnamoorthy and Others, and the same cannot be said to be, in any way, illegal or erroneous.

5. However, Mr. Altaf Ahmad, learned Addl. Solicitor General appearing for the appellant pointed out that second reason given by the High Court is totally erroneous. The High Court arrived at the conclusion that the appeal filed by the Special Public Prosecutor was not maintainable because it was required to be filed through the Public Prosecutor as contemplated u/s 377(2) Cr.P.C.

6. This submission of the learned Addl. Solicitor General requires to be accepted. Section 24(8) Cr.P.C. specifically empowers the Central Government or the State Government to appoint a Special Public Prosecutor for conducting any case or class of cases. Such Special Public Prosecutor would be Public Prosecutor for all the purposes under the Act. It cannot be said that the Special Public Prosecutor is not a Public Prosecutor. Hence, the second reason recorded by the High Court cannot be justified.

7. Further, learned Additional Solicitor General submits that in any set of circumstances, considering the facts, this was a fit case for the High Court to exercise its revisional jurisdiction and, therefore the appellant could have been permitted to convert the appeal as a revision application. Taking into consideration the contentions raised, in our view, this was a fit case for exercise of revisional jurisdiction. Learned Counsel for the respondents also submits that it is for the Court to treat this appeal as a revision application.

8. Hence, this appeal is partly allowed. The High Court to treat the appeal as a revision application and decide the case on merits in accordance with law.