



CRL RC(MD)No.864 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.08.2025

PRONOUNCED ON : 02.09.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.864 of 2025

and

CRL MP(MD)No.9181 of 2025

1.M/s.Sree Aravind Steels Limited,
Trichirappalli, D92-94, Industrial Estate,
Thuvakudi, Trichirappalli.
Rep. by its Managing Director,
Arun Shankar.

2.Arun Shankar ... Petitioners /Accused Nos.1 & 3
Vs.

1.The Assistant Commissioner,
GST and Central Excise I
Division,
No.1, Williams Road,
Cantonment,
Tiruchirappalli-620 001. ... 1st Respondent /Complainant

2.M/s.Arudra Steel Rolling Mills (P)
Ltd.,
(I) No.14-A, EVR Road, Puthur,
Trichirappalli,
(ii) No. B-1, Ashoka Akshara
Apartments,
No.21, Vellaimmal Street, Kilpauk,
Chennai-600 010.



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3.M.Andaperumal,
General Manager,
C/O. Paragon Steel (P) Ltd.,
New Industrial Development Area,
Kanjikode, Palghat,
Kerala-678 621.

... Respondents 2 & 3 /
Accused Nos. 2 & 3

(P.Sreenivasalu Reddy, (Since Deceased))

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, to call for the records of the proceedings in CrI.M.P.No.12824 of 2025 in C.C.No.05 of 2009 pending before the learned Chief Judicial Magistrate, Tiruchirappalli and quash the order dated 18.06.2025 and grant stay of the proceedings in C.C.No.5 of 2009, pending in the filing of the learned Chief Judicial Magistrate, Trichirappalli, pending disposal of this petition filed by the petitioner.

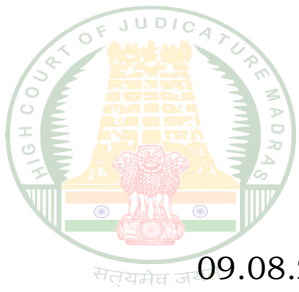
For Petitioner : Mr.S.Murugappan

For Mr.S.Chandrasekar

For Respondents : Mr.N.Dilip Kumar,
Standing counsel

ORDER

The present Criminal Revision Case is filed, challenging the order dated 18.06.2025, passed by the learned Chief Judicial Magistrate, Trichirappalli, in Criminal M.P.No.12824 of 2025 in C.C. No.5 of 2009, whereby the petition filed by the complainant/Assistant Commissioner, GST and Central Excise, Trichirappalli, under Sections 294 r/w 173(5) Cr.P.C., 1973, seeking permission to mark the order-in-original dated



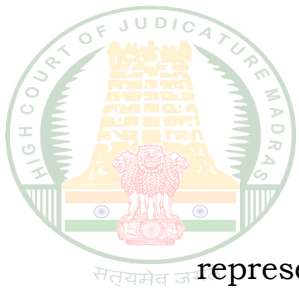
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09.08.2023 as an additional document was allowed. The revision petitioners herein are Accused Nos.1 and 3 in C.C. No.5 of 2009.

2. It is submitted by both the counsels that the 3rd respondent did not participate in the trial in Criminal M.P.No.12824 of 2025 before the learned Chief Judicial Magistrate, Trichirappalli. That apart, he is only the General Manager of the 2nd respondent company and he is not a necessary party to this case. Memo has also been filed to that effect. Recording the same, notice to R-3 is dispensed with.

3. Case of the Prosecution/Complainant:

A complaint was originally lodged in 2006 on the strength of show-cause notices dated 17.08.2004 and 20.10.2004, culminating in an adjudication order dated 30.12.2005 passed by the Commissioner of Central Excise. On appeal, the Customs, Excise and Service Tax Appellate Tribunal (herein after referred to as "CESTAT") Chennai, set aside the said adjudication order, holding that excise duty cannot be demanded from two different entities for the same goods, while leaving liberty to the department to issue fresh notices. Pursuant thereto, two fresh notices dated 24.07.2007 were issued, and after due



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representation by Accused Nos.1, 3 and 5, a fresh order-in-original was passed on 09.08.2023 by the Joint Commissioner, GST, Trichirappalli. Since this order directly concerns the accused still facing trial, the complainant sought to mark the same under Section 294 Cr.P.C., 1973, on the premise that the accused cannot dispute its genuineness.

4. Case of the Accused/Revision Petitioners:

The complaint itself was launched on the basis of the 2004–2005 notices and the order-in-original dated 30.12.2005, all of which were quashed by the CESTAT in 2007. The sanction order dated 2006 was founded only on those quashed proceedings; therefore, no subsequent adjudication order can be relied upon unless fresh sanction is obtained. The adjudication order dated 09.08.2023 was not in existence when the sanction order was passed. Introduction of such subsequent documents would fundamentally alter the substratum of the prosecution. Sections 173(5) and 294 Cr.P.C., 1973, have no application to private complaints under the Central Excise Act, 1944. Reliance was placed on Assistant **Collector of Customs v. L.R. Malvani**¹, which clarified that provisions of Section 173 Cr.P.C. are confined to police reports. The attempt to bring in documents generated after 2006 is misconceived, as they were

¹ 1999 (110) ELT 317 (SC)



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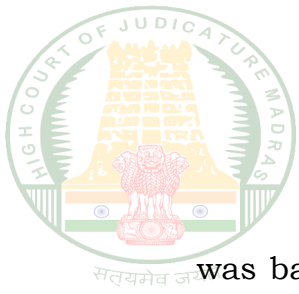
never before the sanctioning authority. Further, the Chief Judicial Magistrate erred in observing that the 2023 order “was in existence at the time of complaint,” which is factually incorrect.

5. Findings of the Learned Trial Court:

The Chief Judicial Magistrate extracted Section 294 Cr.P.C., 1973, and in the absence of any formal proof of admitted documents, observed that the defence had not disputed the genuineness of the 2023 adjudication order. Invoking Section 173(5) Cr.P.C., the Trial Court held that since the prosecution had inadvertently omitted to file the adjudication order, the same could be introduced without causing prejudice to the accused. It concluded that marking such a document would aid in “finding the truth” and accordingly allowed the petition.

6. Arguments of the Petitioner’s Counsel:

6.1. This revision petition challenges the order passed by the Chief Judicial Magistrate allowing the prosecution to mark a document under Sections 294 read with 173(5) CrPC, 1973. The document in question, which is the fresh adjudication order dated 09.08.2023 did not exist when the complaint was filed in 2006. The original complaint



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was based on two show-cause notices issued in 2004 and 2005, which culminated in an adjudication order dated 30.12.2005. That order, along with the show-cause notices, was later set aside by the CESTAT in its order dated 08.03.2007, holding that two manufacturers cannot be liable for the same goods. The CESTAT permitted the department to issue fresh show-cause notices and proceed in accordance with law.

6.2. *Subsequent Adjudication and Complaint Chronology:*

The department issued fresh show-cause notices dated 24.07.2007 to Aravind Steel and Arudhra Steel. A civil miscellaneous application in CMA(MD)No.3235 to 3238 of 2007 was filed before this court against the CESTAT order dated 08.03.2007 and the Division Bench by order dated 05.01.2021, left the legal issue open, directing adjudication to proceed. The Joint Commissioner, after remand, passed a fresh adjudication order on 09.08.2023. The prosecution seeks to now mark this 2023 adjudication order in the pending prosecution initiated in 2006.

6.3. *Section 173(5) Cr.P.C., 1973, Not Applicable:*

The 2023 adjudication order was not part of the original documents perused by the sanctioning authority in 2006 and was not in existence when the complaint was filed. Section 173(5) applies only to



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cases instituted on a police report and not to private complaints under special enactments like the Central Excise Act, 1944. Cited **Assistant Collector of Customs v. L.R. Malvani**², which held that 173(4) and by extension 173(5) do not apply to such cases. Counsel for respondent conceded this legal point.

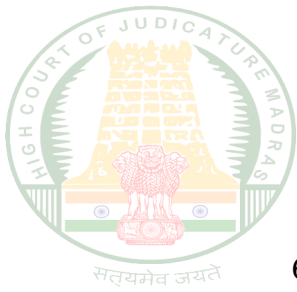
6.4. **Impropriety of Sanction Based on Later Events:**

The sanction order issued in 2006 was based on the original adjudication which no longer exists. The 2023 adjudication order imposes liability only on Aravind Steel (A-1) whereas the earlier order had imposed joint and several liability on A-1 and A-2. Hence, the 2023 order has to be placed before the sanctioning authority to obtain fresh sanction. Marking the 2023 document without fresh sanction would render the prosecution illegal. Cited circulars dated 09.08.1990 and 15.06.2007, require sanctioning authority to examine all relevant documents. Referred to **State of Bihar v. P.P. Sharma**³, and **Assistant Commissioner of Customs, Chennai v. Athishta Rajan**⁴, on the necessity of valid sanction.

² Supra 1

³ MANU/SC/0542/1992

⁴ 2017 (352)E.L.T.333(Mad)



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6.5. *Errors in Trial Court Order:*

The Chief Judicial Magistrate erroneously held that the 2023 adjudication order was in existence at the time of filing the complaint this is factually incorrect. Petitioner's counsel pointed out contradictions in the counter filed by the prosecution on one hand admitting the order wasn't foreseen, and on the other suggesting it was considered by the sanctioning authority.

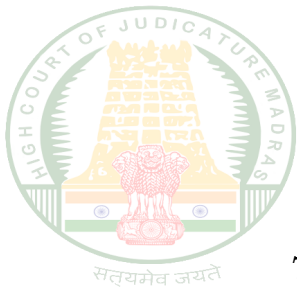
6.6. *Prejudice to the Accused:*

The marking of this document would substantially prejudice the petitioners because it imposes liability solely on A-1, shifting the nature of the prosecution case. A fresh complaint, if at all, should be filed after obtaining proper sanction based on the 2023 adjudication.

7. *Arguments of the Respondent's Counsel:*

7.1. *Concession on Section 173(5) CrPC:*

Conceded that the application was erroneously filed under Section 173(5) Cr.P.C, 1973, which is not applicable to private complaints. Maintained that despite the error in provision of law relied, the admissibility of the document is unaffected.



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7.2. *Two Parallel Proceedings:*

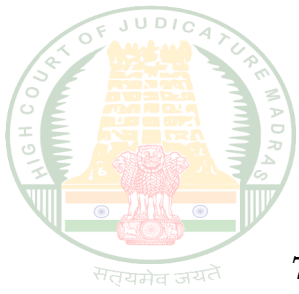
Explained the bifurcation between adjudication and prosecution proceedings. The original adjudication (2005) was set aside by the tribunal in 2007. Fresh show-cause notices issued in July 2007 culminated in the 2023 adjudication. The Hon'ble Division Bench of this Court in CMA Nos. 3235 to 3238/2007 recorded that the department was proceeding with the fresh show-cause notices and left the legal issue open.

7.3. *Relevance and Admissibility of 2023 Order:*

The adjudication order dated 09.08.2023 was passed after due process. The prosecution only seeks to mark it as evidence its probative value will be tested at trial. The order is not disputed; therefore, under Section 294 Cr.P.C., 1973, formal proof is not necessary.

7.4. *No Prejudice Caused to the Petitioners:*

The 2023 order only strengthens the prosecution's case. If the accused claim it helps them, they may rely on it during the trial. The prosecution merely wants the record to reflect the latest development and shift in liability. The accused is not prejudiced as the trial court can still assess the impact of this document.



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7.5. Distinction Between Sanction and Approval:

Contended that under the Central Excise Act, obtaining sanction is not mandatory only administrative approval is required. The 1990 and 2007 circulars merely create internal checks and balances, not statutory mandates.

Cited **Panchamal Plastics v. Deputy Commissioner of Central Excise**⁵, to contend that sanction is not mandatory.

7.6. Adjudication and Criminal Prosecution are Independent:

Cited **Rimjhim Ispat Ltd. v. Union of India**⁶ (SC, 24.07.2025), to assert that adjudication and criminal prosecution can proceed independently and simultaneously. Completion or outcome of adjudication is not a sine qua non for initiating prosecution.

7.7. Correct Provision is Section 244 Cr.P.C., 1973:

Since the case is instituted otherwise than on a police report, Section 244 CrPC (warrant cases) applies. “All such evidence” under Section 244(1) includes additional documents not part of the complaint. Cited **C. Ramesh v. State of Karnataka**⁷, to assert that additional materials can be brought on record. Section 294 Cr.P.C., 1973, allows

⁵ 2017 (346) ELT 539

⁶ 2025(32) Centax 465 (SC)



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admission of uncontroverted documents without formal proof.

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7.8. *Analogy with Civil Decree in Cheque Bounce Cases:*

Argued by analogy: in cheque bounce prosecutions (Section 138 NI Act), if a civil decree is later passed, that decree can be brought on record. Similarly, the 2023 adjudication order can be placed before the criminal court.

7.9. *Delay and Trial Pending Since 2006:*

Highlighted that the criminal prosecution has been pending since 2006 and one accused has died. Requested that the marking of the 2023 order not be treated as a fatal procedural error and that trial should proceed without stay.

8. *Points for Determination:*

(i) Whether Section 173(5) Cr.P.C., 1973, can be invoked in a prosecution launched under the Central Excise Act, 1944, based on a private complaint?

(ii) Whether the adjudication order dated 09.08.2023, passed long after the sanction order, can be introduced in the pending prosecution



without fresh sanction?

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(iii) Whether the Trial Court was justified in permitting the marking of the 2023 order under Section 294 Cr.P.C., 1973?

9. Heard the learned counsel for the petitioner the learned counsel for the respondent and carefully perused the materials available on record.

10. **Analysis:**

10.1. Applicability of Section 173(5) Cr.P.C., 1973, Section 173(5) Cr.P.C., 1973, is attracted only to cases instituted on police reports. The instant case is not based on a police report but on a private complaint under the Central Excise Act, 1944. The Supreme Court in **Assistant Collector of Customs v. L.R. Malvani**⁸, has categorically held that Sections 173(4) and 173(5) have no application to such complaints and the relevant portions are extracted as follows:

“12. On a plain reading of Section 173, Criminal Procedure Code, it is clear that the same is wholly inapplicable to the facts of the present case. In the instant case no report had been sent under Section 173, Criminal Procedure Code. Therefore that

⁸ Supra 1



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provision is not attracted. That provision is attracted only in a case investigated by a police officer under Chapter XIV of the Criminal Procedure Code, followed up by a final report under Section 173, Criminal Procedure Code. It may be remembered that sub-section (4) of Section 173, was incorporated into the Criminal Procedure Code for the first time by Central Act 26 of 1955, presumably because of the changes effected in the mode of trials in cases instituted on police reports. Before the Criminal Procedure Code was amended by Act 26 of 1955, there was no difference in the procedure to be adopted in the cases instituted on police reports and in other cases. Till then in all. cases irrespective of the fact whether they were instituted on police reports or on private complaints, the procedure regarding enquiries or trials was identical. In both type of cases, there were two distinct stages i.e. the enquiry stage and the trial stage. When the prosecution witnesses were examined in a case before a charge is framed, it was open to the accused to cross-examine them. Hence there was no need for making available to the accused the documents mentioned in sub-section(4) of Section 173, Criminal Procedure Code. The right given to him under Section 162, Criminal Procedure Code was thought to be sufficient to safeguard his interest. But Act 26 of 1955 as mentioned earlier made substantial changes in the procedure to be adopted in the matter of enquiry in cases instituted on police



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reports. That procedure is now set out in Section 251(A), Criminal Procedure Code. This new procedure truncated the enquiry stage. Section 251 (A), Criminal Procedure Code says that the Magistrate, if upon consideration of all the documents referred to in Section 173 and making such examination if any, of the accused as he thinks necessary and after giving the prosecution and the accused an opportunity of being heard considers the charge against the accused to be groundless he shall discharge him but if he is of opinion that there is ground for presuming that the accused has committed an offence triable as a warrant case which he is competent to try and which in his opinion could be adequately punished by him, he shall frame in writing a charge against him. Under the procedure prescribed in Section 251 (A), Criminal Procedure Code but for the facility provided to him under s.173(4) of that Code an accused person would have been greatly handicapped in his defence. But in a case instituted on a complaint, like the one before us and governed by Sections 252 to 259 of the Criminal Procedure Code, no such difficulty arises. Therein the position is as it was before the amendment of the Criminal Procedure Code in 1955.

13. We are unable to agree with the learned Judges of the High Court that the legislature did not make available the benefit of Section 173(4), Criminal Procedure Code in cases instituted otherwise than on police reports by oversight. The observations of



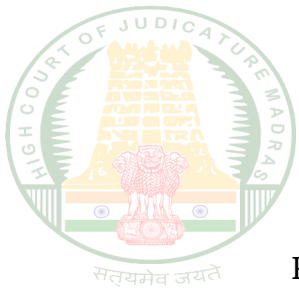
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the learned Judges in the course of their judgment that "Even the great Homer occasionally nods. There is nothing to show that the legislature has applied its mind to the question of the amendment of the procedure so far as the investigation of an offence under the Sea Customs Act is concerned at the time when it was considering amendments to the Criminal Procedure Code" is without any basis. In the first place, it is not proper to assume except on very good grounds that there is any lacuna in any statute or that the legislature has not done its duty properly. Secondly from the history of the legislation to which reference has been made earlier, the reason for introducing Section 173(4) is clear. The learned judges of the High Court were constrained to hold that Section 173(4), Criminal Procedure Code in terms does not apply to the present case. But strangely enough that even after coming to the conclusion that provision is inapplicable to the facts of the present case, they have directed the learned Magistrate to require the prosecution to make available to the accused, the copies of the statements recorded from the prosecution witnesses during the enquiry under the Customs Act."

The concession by the prosecution itself before this Court that invocation of Section 173(5) was erroneous fortifies this position.

10.2. **Sanction Requirement:**



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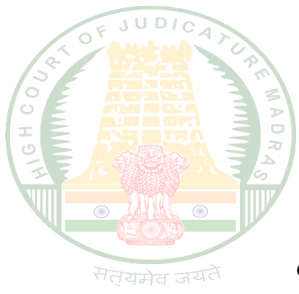
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Prosecution under the Central Excise Act, 1944, requires prior sanction/approval from the competent authority. The sanction order dated 2006 was granted on the basis of the adjudication completed in 2005. That order having been quashed by CESTAT, the substratum of sanction itself stands effaced. The subsequent order dated 09.08.2023 imposes liability differently and was never placed before the sanctioning authority.

(i) In **State of Bihar v. P.P. Sharma**⁹, the Hon'ble Supreme Court has held as follows:

“27. The sanction under section 197 Cr. P.C. is not an empty formality. It is essential that the provisions therein are to be observed with complete strictness. The object of obtaining sanction is that the authority concerned should be able to consider for itself the material before the investigating officer, before it comes to the conclusion that the prosecution in the circumstances be sanctioned or forbidden. To comply with the provisions of Section 197 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is desirable that the facts should be referred to on the face of the sanction. Section 197 does not require the sanction to be in any particular form. If the facts constituting the offence charged are not shown on the face of the sanction, it is

⁹ Supra 3



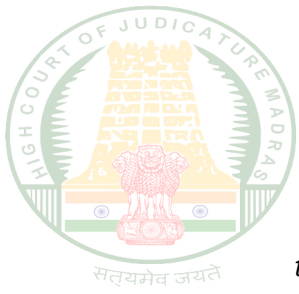
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open to the prosecution, if challenged, to prove before the court that those facts were placed before the sanctioning authority. It should be clear from the form of the sanction that the sanctioning authority considered the relevant material placed before it and after a consideration of all the circumstances of the case it sanctioned the prosecution.”

(ii) In **Assistant Commissioner of Customs v. Athishta Rajan**¹⁰, the Hon’ ble Supreme Court reiterated that sanction must be based on all relevant facts and documents; otherwise, prosecution is vitiated and the relevant portion is extracted as follows:

“12. Even though the court below held that a sanction order passed by the Commissioner of Customs was filed along with complaint, but it was not marked before the Court as an evidence. The existence of valid sanction is pre-requisite to take cognizance of offence alleged to have been committed under the Customs Act. Any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, and the entire proceedings are rendered void ab initio. The Hon’ble supreme Court in number of cases held that the grant of sanction is not a mere formality, but a solemn and sacrosanct act which affords protection to a persons against frivolous prosecution and the Court shall also consider whether before granting sanction,

¹⁰ Supra 4



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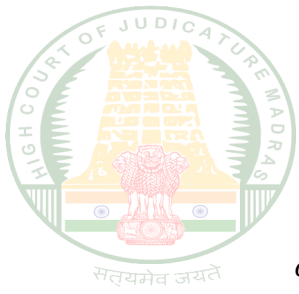
the sanctioning authority was aware of the facts constituting the offence and apply its mind before granting sanction for prosecution.”

(iii) The Circular :15/90-CX.6 dated 09.08.1990 which provides with the guidelines for prosecution under the Central Excises & Salt Act,1944, mandates as follows:

“2. The guidelines so far issued are not being revised and incorporated in this letter. These are as unders -

(i) Prosecution should be launched with the final approval of the Principal Collector after the case has been carefully examined by the Collector in the light of the guidelines.

*(ii) Prosecution should not be launched in cases of technical nature, or where the additional claim of duty is based totally on a difference of interpretation of law. Before launching any prosecution, it is necessary that the department should have evidence to prove that the person, company or individual had guilty knowledge of the offence, or had fraudulent intention to commit the offence, or in any manner possessed **mens rea** (mental element) which would indicate his guilt. It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but it should be restricted to only*

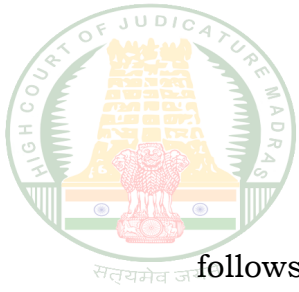


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against such of the Director like the Managing Director, Director in charge of Marketing and Sales, Director (Finance) and other executives who are in charge of day-to-day operations of the factory. The intention should be to restrict the prosecution only to those who have taken active part in committing the duty evasion or connived at it. For this purpose, the Collectors should go through the case file and satisfy themselves that only those Chairman / Managing Directors/ Directors / Partners / Executives / Officials against whom reasonable evidence exists of their involvement in duty evasion, should be proceeded against while launching the prosecution. For example, Nominee Directors of financial institutions, who are not concerned with day-to-day matters, should not be prosecuted unless there is very definite evidence to the contrary. Prosecution should be launched only against those Directors/Partners/Officials etc. who are found to have guilty knowledge, fraudulent intention or mens rea necessary to bind them to criminal liability.”

(iv) The Government of India, Ministry of Finance (Department of Revenue) Central Board of Excise & Customs ,New Delhi vide letter in M.F.(D.R.)Letter F.No.208/21/2007-CX.6, dated 15.06.2007, has given instructions regarding launching of prosecution and arrest under the Central Excise Act,1944, and the relevant portion of the same is as



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follows:

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“2. I am directed to say that as per the Central Excise Act, 1944, and Central Excise Officer not below the rank of Inspector with prior approval of the Commissioner can arrest any person under section 13 whom he has reason to believe is liable to punishment under the Central Excise Act or the rules made thereunder. Further prosecution can be launched under section 9 for the offences covered under section 9(1) of the Act. As per provisions of section 9AA, prosecution may be launched against any person, Director, Manager or any other person who is responsible for conduct of business of the company/firm and is found guilty of the offences under the Act/Rules. It has been provided that prosecution may be launched in cases involving duty amount of Rs. 25 lakh or more. However, prosecution can be considered in case of habitual offenders irrespective of monetary limit prescribed, if circumstances so warrant. As per the procedure laid down for launching of prosecution, the Commissioner of Central Excise should process and forward the proposal to the Chief Commissioner (or the Director General of Central Excise Intelligence as the case may be) in cases which are fit for launching of prosecution. As per the instructions issued in this regard, the Chief Commissioner or DG, (CEI) has power to sanction prosecution. It is also mentioned that the decision to launch prosecution should be taken by the adjudicating authority



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immediately after the passing of adjudication order.”

Hence, without fresh sanction, the 2023 order cannot be pressed into service.

10.3. ***Prejudice to the Accused:***

The prosecution contends that the order is not disputed and therefore can be marked under Section 294 Cr.P.C., 1973. However, admissibility is not equivalent to relevancy. Merely because a document is genuine does not mean it can be introduced if it was not part of the foundation of the prosecution. The 2023 order materially alters the liability of the accused. Permitting its introduction without fresh sanction would cause serious prejudice.

10.4. ***Independence of Adjudication and Prosecution:***

It is true that adjudication and prosecution are independent proceedings as held in ***Radhe Shyam Kejriwal v. State of West Bengal***¹¹ and reaffirmed in ***Rimjhim Ispat Ltd. v. Union of India***¹². However, independence does not mean that documents created long after sanction can be retrospectively introduced to sustain an existing prosecution.

¹¹ (2011) 3 SCC 581

¹² 6 extracted supra



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11. Accordingly , it is the considered opinion of this court that, the learned Chief Judicial Magistrate has committed a grave error in invoking Sections 173(5) and 294 Cr.P.C., 1973, to permit the marking of the 2023 adjudication order. The impugned order proceeds on the erroneous premise that the 2023 order was in existence at the time of complaint, which is demonstrably incorrect. In the absence of fresh sanction, the subsequent order cannot form part of the existing prosecution.

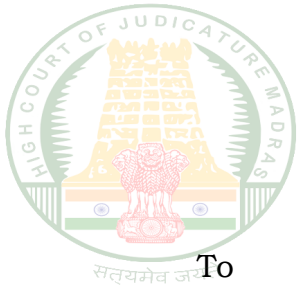
12. In final, the Criminal Revision Case is allowed. The order dated 18.06.2025 passed by the Chief Judicial Magistrate, Trichirappalli, in Criminal M.P. No.12824 of 2025 in C.C. No.5 of 2009 is set aside. It is, however, made clear that this order will not preclude the complainant/department from seeking fresh sanction and initiating appropriate proceedings, if so advised, in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
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Note: Issue order copy on 02.09.2025.

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To

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1.The Chief Judicial Magistrate,
Tiruchirappalli.



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L.VICTORIA GOWRI, J.,

Sml

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