IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

Crl.RC.No.412 of 2025
and
Crl.MP.Nos.4620 & 4623 of 2025

M/s.Aspinwall & Company Limited,
Rep. by its active Director,
T.R.Radhakrishnan,
having office at No.48,
Rajaji Salai, 5th Floor, Wavoio Mansion,
Chennai - 600 001. ...Petitioner

Vs.

Inspector of Police,
CBI, ACB,
Chennai. ...Respondent

Prayer: Criminal Revision Petition filed under Section 438 r/w 442 of BNSS, to call for the records in CC.No.10 of 2020 on the file of the learned XIV Additional Special Judge for CBI Cases, Chennai by setting aside the order passed in Crl.MP.No.8341 of 2024 dated 30.01.2025 by the learned XIV Additional Special Judge for CBI Cases.

For Petitioner : Mr.John Sathyan
Senior Counsel assisted by
Mr.J.Kingsly Solomon

For Respondent : Mr.K.Srinivasan

Special Senior Public Prosecutor
for CBI cases

ORDER

This revision petition challenges the order of the XIV Additional Special Judge for CBI Cases, Chennai, dated 30.01.2025, made in Crl.MP.No. 8341 of 2024 in C.C.No.10 of 2020. By that order, the trial Court dismissed the application filed by the petitioner / Accused No.14 to discharge them from the case.

2. Heard, *Mr. John Sathyan*, the learned Senior Counsel appearing on behalf of the petitioner. The learned Senior Counsel, by taking this Court through the core allegations of this case, would submit that the entire allegation primarily targets the public servant, namely *V. Sangamithra* (Accused No.1), who was the appraiser/assessor of the Customs Department. Upon a surprise check conducted following specific information, she was caught red-handed with Rs.69,700/- along with a slip written by approver N. Murugan, which detailed the exact bribe amounts given by other accused to her. The said public servant is arrayed as Accused No.1, while other Customs House Agents and related parties are arrayed as other accused. In this process, the petitioner, being a juristic person—a company incorporated under the

Companies Act—is also named as Accused No.14.

3. According to the learned senior counsel, Accused No.14 does not have a person or a mind to think and cannot conspire with Accused No.1. If any error is committed by an individual employee of the company, who is also prosecuted individually, in addition, the company cannot be prosecuted. There is no concept of vicarious liability in criminal law. Sections 8 and, consequently, Section 9 of the Prevention of Corruption Act, 1988, only enable the prosecution of corporate entities but are not similar to Section 138 of the Negotiable Instruments Act, 1881, which specifically imposes vicarious criminal liability on a corporate entity. Under these circumstances, prosecuting Accused No.14 appears to be legally untenable.

4. Furthermore, the learned senior counsel contends that the allegations in the Final Report do not establish an offence under Section 8 of the Prevention of Corruption Act, 1988. Nothing further regarding irregularities in the export or the consignment sent by the petitioner/company has been brought on record in the Final Report. Therefore, there is nothing to suggest that the transactions were improper, or that corruption can be presumed. Without such evidence, and given that Section 9 is merely the punishing

provision for the offence defined under Section 8, and considering that a juristic person cannot have personal interactions or conspiracy with Accused No.1, the entire prosecution against the petitioner/Accused No.14 is unsustainable. The petitioner cannot be equated with that of the other accused whose application was earlier dismissed and upheld by this Court in Criminal R.C.Nos.1440 and 1441 of 2022, as that case involved no juristic person.

5. Per contra, the learned senior Special Public Prosecutor for CBI Cases would refer to the relevant materials available in the case. He would point out the deductions made by the Investigating Officer in the Final Report, stating that Accused No.37 and Accused No.38 are the other accused, who are the authorized signatories of Accused No.14, and are being prosecuted in this case. The details of the transaction of the petitioner/company and the activities conducted by them are recorded. L.W.20 (B. Suresh Kumar) had explicitly stated that he paid a bribe of Rs.900/- to Accused No.1 (V. Sangamithra). It is explicitly mentioned that this was to clear the shipping bill of the petitioner/company. His testimony is further supported by L.W.36 (R. Avudayappan), who also clearly explains why this additional large sum is being paid. These statements provide sufficient material to prosecute Accused No.14.

6. The learned Special Public Prosecutor would also rely on the Judgment of the Hon'ble Supreme Court of India in ***Iridium India Telecom Limited Vs. Motorola Incorporated and Others,*** specifically Paragraphs 55 to 64, where the Court considered the law and held that, in these cases, it cannot be considered vicarious liability. Instead, the servant, representative, or delegate of the company embodies the company and speaks on its behalf within their scope. Their mind reflects the company's mind, and if that mind is guilty, then the company may be prosecuted. The Prosecutor would specifically highlight Paragraph No. 64 of the Constitution Bench Judgment in *Standard Chartered Bank vs. Directorate of Enforcement,* which was referenced in the case.

7. Regarding the argument related to Section 8, the learned Special Public Prosecutor would cite the finding by this Court, through Hon'ble Justice Dr. G. Jayachandran, in Crl.R.C.Nos.1440 and 1441 of 2022, where, in a similar case involving Accused No.14 seeking discharge, the Court observed that the mere act of giving a bribe creates a presumption of improper conduct by the public servant.

8. In reply thereof, the learned Senior Counsel appearing on behalf of the petitioner would submit that as far as the statement of L.W.20 (B.Suresh Kumar) is concerned, already when the prosecution sought to record his statement under Section 164 of the Code of Criminal Procedure, he has already given a statement in which he has categorically said that this Rs.900/- was only towards the labour charges and it was not a bribe amount. Therefore, the alleged statement of the said Suresh Kumar before the Investigating Officer gets wiped out, and the entire case of the prosecution has already become doubtful. With reference to the statement that is made by the other witness namely L.W. 36, it can again be seen that he is only a Typist and not an Officer of the company and whatever he says cannot be presumed against the company and these persons can never be seen as the embodiment of the company and when they themselves are independently prosecuted, it is nothing but vicarious liability that is fastened against the company.

9. I have considered the rival submissions that are made and perused the material records of the case.

10. It is relevant to extract Sections 8 and 9 of the Prevention of Corruption Act, 1988:

"8.Offence relating to bribing to a public servant.

(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention-

(i) to induce a public servant to perform improperly a public duty; or

(ii)to reward such public servant for the improper performance of public duty;

shall be punishable with imprisoment for a term which may exxtend to seven years or with fine or with both;

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of givin such undue advantage:

Provided also that when the offence under this Section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

Illustration.-A person, 'P' gives a public servant, 'S' an amount of ten thousant rupees to ensure that he is granted a licese, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation.- It shall be immaterial whether the person to whom an undue advantage is given or promosed to be given is the same person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue *advantage is given or promised to be given by the person directly or through a third party.*

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating authority or investigating agency in its investigation of the offence alleged against the later.

9. Offence relating to bribing a public servant by a commercial organisation.

(1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if such person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending-

(a) to obtain or retain business for such commercial organisation, or

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes to this Section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under Section 8, whether or

not such person has been prosecuted for such offence.

(3) For the purposes of Section 8 and this Section,-

(a) "commercial organisation" means-

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of person formed in India and which carries on a business whether in India or outside India; and

(iv)any other partnership or association of persons which is formed outside India and which carries on a business, or part of business, in any part of India;

(b) "business" includes a trade or profession or providing service;

(c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

Explanation 1.- The capacity in which the person performs services for or on behaf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.-Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and *not merely by reference to the nature of the relationship between such person and the commercial organisation.*

Explanation 3.If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under Sections 7A, 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.]

11. Thus, it can be seen that the said provisions do enable the recognition of offences committed by commercial organizations, and these organizations can also demonstrate that they had adequate procedures and guidelines to prevent the persons associated with them from engaging in such conduct punishable under the Act. It is noteworthy that these sections do not contain any specific provision regarding vicarious liability of the corporate entity. Therefore, in this case, the Court must decide whether the allegations made against the petitioner / Accused No.14 pertain to vicarious liability or

not. The learned Special Public Prosecutor contends that the acts of the accused, Accused Nos.37 and 38, embody the actions of the company as a whole rather than individual actions. Conversely, the learned Senior Counsel representing the petitioner argues otherwise.

12. In this regard, the statement of L.W.36 is relevant, and the following is extracted for ready reference:

> *"On being asked, I state that, our company and the authorized signatories knew the Customs Officials at CFS will demand Rs.300/- for 20 feet container, Rs.600/- for 40 feet container, Rs.100/- from the employees of CHAs for LCL Bill for performing public duty improperly in respect of Bill of Entries pertaining to the Import goods and also they will demand Rs.900/- for 20 feet container for on wheel inspector, Rs.1800/- for 40 feet container for on wheel inspection, Rs.100/- for Ware House Bill and Rs.200/- for Draw Back Bill for the clearance of goods pertaining to the Bill of Exports. Hence, our company has given the said amount of Rs.1700/- which includes the bribe amount for clearing the consignments mentioned in the shipping bill No.6592947 along with other expenditures."*

13. Therefore, when a corporate entity or juristic person has such a policy, it is possible for the prosecution to contend that the witness acted as an embodiment of the company, and it is not vicarious liability. Regarding the statement of L.W. 36, whether it should be regarded as the company's policy,

whether he was authorized to make it, and whether the company had a different policy altogether are all matters for the defence to prove during the trial. This Court cannot undertake that exercise at this stage of considering the discharge application.

14. Even the other argument regarding the 164 statement made by the listed witness B. Suresh Kumar would, in this Court's opinion, be a matter for trial and cannot be considered at this stage. Regarding the next submission by the learned Senior Counsel about whether there is inducement to improperly/illegally perform a public duty, this also cannot be examined at this stage, especially since a *prima facie* view has been taken by this Court in Crl.R.C. Nos. 1440 and 1441 of 2022 in the same case. In any event, the point can be only addressed during the trial. Accordingly, the conclusion reached by the trial Court in refusing to discharge the petitioner / Accused No. 14 cannot be faulted.

15. Accordingly, finding no merits, the instant Criminal Revision Petition stands dismissed.

16. At this stage, the learned Senior Counsel would also pray for

dispensing with the person appearance of the person representing Accused.No.14 before the trial Court. Considering the overall facts and circumstances of the case, I am of the view that the personal appearance of Mr.T.R.Radhakrishnan, representing Accused No.14, before the Trial Court can be dispensed with, except for necessary hearings such as framing of charge, questioning and such other hearings as the Trial Court may insist upon.

17. No costs. The connected miscellaneous petitions are closed.

01.08.2025

Neutral Citation: Yes
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To
1. Inspector of Police,
CBI, ACB,
Chennai.

2. XIV Additional Special Judge for CBI Cases,
Chennai.

3. The Public Prosecutor,
Madras High Court.

D.BHARATHA CHAKRAVARTHY, J.

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Crl.RC.No.412 of 2025

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