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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2480/2013 & CrI. M.A. 9617/2013

TARSEM LAL VERMA

..... Petitioner

Through: Petitioner in person

versus

CBI

..... Respondent

Through: Mr. Narinder Mann, Special Public
Prosecutor for Respondent-CBI

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

05.07.2013

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In a disproportionate assets case, vide order of 18th May, 2013, petitioner has been called upon to face the trial in RC No.53(A)2008/CBI/ACB/N.D.

Impugned order is challenged by petitioner, who has chosen to argue this petition in person, by contending that he was not a public servant during the check period and he had not acquired any assets by illegal means or by abuse of his position while in service. The grievance made by petitioner is that he was not put to notice by Investigating Officer to explain the assets. During the course of hearing, it was urged by petitioner that income of ₹91,07,212/- has been ignored by the trial court while framing the charge for offence of having possessed assets of ₹42,12,151/- i.e. 42.16% whereas initially it was prosecution's

case that the purported disproportionate assets are of 29%. According to petitioner, he is a renowned photographer and his prosecution is motivated and is at the instance of Mr. P.S. Hooda, Deputy Director in this office, who was bent upon to ensure that petitioner does not get promotion. Alleging bias against Investigating Officer, quashing of impugned order is sought by petitioner while relying upon decisions in *P.K. Gupta v. CBI* 2011 (4) JCC 2352; *D.S.P., Chennai v. K. Inbasgaran* T 2005(10) SC 332, AIR 2006 SC 552; *Kanwarjit Singh Kakkar v. State of Punjab* 2011(3) JCC 1917; *State of Maharashtra v. Pollonji Darabshaw Daruwalla* AIR 1988 SC 88; *K.R. Purushothaman v. State of Kerala* (2005) 12 SCC 631; *Alexander v. CBI* 2006 (2) Crimes 636; *Jagan M Seshadri v. State of T.N.* (2002) 9 SCC 639 and *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335.

Mr. Narinder Mann, Special Public Prosecutor for Respondent-CBI, drew attention of this Court to *Explanation-2* to Section 2 of *The Prevention of Corruption Act, 1988* to submit that petitioner had worked as public service during the check period and so, the legal defect in his appointment will not stand in the way of criminal prosecution in this case as even in the decision in W.P.(Civil) No.3450/1998 titled *Union of India & Ors. v. Tarseem Lal Verma* rendered on 18th August, 2009 though petitioner's discharge from service w.e.f. 5th May, 1983 has been upheld, but it has been noted in the aforesaid decision that petitioner had been working in his official capacity and had drawn his salary, monetary benefits, etc. from the year 1983 till the year 2009 and so, petitioner's employer has been restrained from recovering these monetary benefits from petitioner. Thus, it is submitted that petitioner cannot contend that

he was not working as public servant during the check period. Attention of this Court was also drawn to the pertinent observation made in *Om Prakash Sharma v. CBI*, 2012 III AD (Delhi)704, which are as under: -

"At this stage the scope of interference being very limited, this Court will not delve into the matter for the purpose of sifting the evidence and venture a mini trial. The error committed by the Learned Special Judge can be corrected during the trial. Even if the contentions of the Petitioner are accepted and certain amounts deducted, still there are parts of the assets which are known to the Petitioner and he can explain the same during trial by leading defense evidence. Thus, the Petitioner is required to face the trial for offence under Section 13 (1) (e) read with 13 (2) of the PC Act. Since the trial has already started and in view of the law laid down by the Supreme Court, this Court will not act as an appellate Court and enter into an exercise of calculating the assets at this stage. It would be thus appropriate that the issues raised by the Petitioner are dealt with during trial."

Afore-noted observations reiterate the legal position regarding the parameters governing the framing of the charge. The so-called discrepancies pointed out by petitioner in this petition are required to be explained and this can be done during the trial and to scrutinize the charge-sheet at this stage to test its veracity threadbare would be a premature exercise, which this Court is not inclined to undertake. The position of law is well settled regarding putting an accused to trial if prima facie case is made out. Even on strong suspicion, a person can be put to trial. The pertinent observations made by the Apex Court in *Amit*

Kapoor v. Ramesh Chander and Another (2012) 9 SCC 460 are as under:

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"At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at the stage."

In the instant matter, a prima facie case to call upon accused to face trial for the offence under Section 13 (1) (e) of *The Prevention of Corruption Act, 1988* punishable under Section 13 (2) of *The Prevention of Corruption Act, 1988* is made out. Finding no illegality or infirmity in the impugned order and the charge framed in pursuance thereto, I dismiss this petition while refraining to comment on the merits of this case lest it may prejudice petitioner at trial.

The petition and the application are accordingly disposed of.

(SUNIL GAUR)
Judge

JULY 05, 2013

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