

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 288 OF 2010

Vinod Kumar Agarwal.

..Petitioner.

Versus

The Competent Authority and
and Others.

..Respondents.

Mr. Sessa Gopalan for the Petitioner.
Ms. Rebecca Gonsalvez for Respondent No. 2.
Mr. J. P. Yagnik, APP for the Respondent-State.

Coram : Ranjit More &
A. S. Gadkari, JJ.

Date : **July 28, 2017.**

P. C. :

1. Heard the learned Counsel for the Petitioner, the learned Counsel for Respondent No. 2 and the learned APP for the State.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the communication dated 29th December 2009 and the notice dated 12th March 2010 issued to him by Respondent No.1. By the communication dated 29th December 2009, Respondent No. 1 in exercise of powers under section 15 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [for short "*SAFEMA Act*"], summoned the Petitioner to appear before him. By the notice dated 12th March 2010 issued

under section 6(1) of the SAFEMA Act, Respondent No. 1 called upon the Petitioner to indicate the source of income, earnings or assets out of which the properties mentioned in the said notice have been acquired.

3. The admitted facts are as under :

The Joint Secretary, Cofeposa Unit, New Delhi on 14th March 2008 issued detention order against the Petitioner under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 [for short "*COFEPOSA Act*"]. In pursuance of the detention order, on 6th July 2009 Respondent No. 1 issued the summons under section 15 of the SAFEMA Act calling upon the Petitioner to disclose the properties. The Joint Secretary, however, thereafter passed the order dated 18th November 2009 under section 21 of the General Clauses Act, 1897 thereby revoking the Petitioner's detention order dated 14th March 2008. The Petitioner thereafter by his letter dated 23th November 2009 informed Respondent No.1 about the revocation of his detention order and requested Respondent No. 1 to drop the proceedings initiated against him under the provisions of the SAFEMA Act.

4. The learned Counsel for the Petitioner submitted that after revocation of the Petitioner's detention order, Respondent No.1 could not have initiated the proceedings under SAFEMA Act. On this sole ground, he seeks quashment of the impugned communication and notice.

5. The learned Counsel for Respondent No.2 has however supported the impugned order and submitted that there is no substance in the writ petition and the same deserves to be dismissed.

6. Having heard the learned Counsel appearing for the respective parties and having gone through the petition and annexures thereto, we find that the impugned communication and notice cannot be sustained. In the present case, the detention order of the Petitioner dated 18th November 2009, was revoked under section 21 of the General Clauses Act, 1897 and this revocation was communicated to Respondent No. 1 from time to time by sending various letters, namely, letters dated 23rd November 2009, 2nd December 2009, 23rd December 2009 and 8th January 2010. Despite these letters, impugned communication and notice were issued to the Petitioner.

7. It is settled position in law that detention order under COFEPOSA Act is a condition precedent to initiate action under the provisions of SAFEMA Act. Since before the issuance of impugned communication and notice under section 6(1) of the SAFEMA Act, the Petitioner's detention order was revoked, the impugned communication and notice could not have been issued. The same cannot be sustained and deserve to be quashed and set aside. In the circumstances, the petition is made absolute in terms of prayer clause (a).

[A. S. GADKARI, J.]

[RANJIT MORE, J.]