



WEB COPY



W.P.Nos.14254 to 14256 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2024

CORAM:

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

W.P.Nos.14254 to 14256 of 2008
and M.P.Nos.1, 1 & 1 of 2008

K.P. Abdul Majeed	... <i>Petitioner in WP.No.14254/2008</i>
Rukhiya	... <i>Petitioner in WP.No.14255/2008</i>
P.K. Umaiba	... <i>Petitioner in WP.No.14256/2008</i>

Vs.

Competent Authority,
SAFEM (FOPA) and NDPS Act,
Chennai – 17.

... *Respondent in all WPs*

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondent from any way proceeding with the notice under Section 6(1) of SAFEMA (FOPA) Act in reference to OCA/MDS/2909, OCA/MDS/2910, OCA/MDS/2911 respectively dated 25.03.2004 as the same is without jurisdiction.



W.P.Nos.14254 to 14256 of 2008

(in all WPs)

For Petitioners : Mr.B.Kumar,
Senior Counsel
for Mr.R.Loganathan

For Respondent : Mr.ARL.Sunderasan,
Additional Solicitor General of India
assisted by Mr.N.Ramesh,
Senior Panel Counsel

COMMON ORDER

*(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)*

These Writ Petitions have been instituted challenging the notice issued under Section 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as 'SAFEMA').

2. Adverting to the facts of the cases on hand may not be required in view of the fact that the Hon'ble Supreme Court of India had set aside the detention order passed under the provisions of COFEPOSA against the affected persons. The detention order was set aside with reference to the writ petitioners herein and one Mr.C.Surendrakumar @ C.Surendran.



W.P.Nos.14254 to 14256 of 2008

3. The grievances of the writ petitioners are that in the case of Mr.C.Surendrakumar, the office of the Competent Authority passed an order in proceeding dated 14.07.2022, dropping all further proceedings initiated pursuant to Section 6(1) notice under SAFEMA. Therefore, the said case is to be considered as precedent for the purpose of setting aside the notice issued under Section 6(1) of SAFEMA, which is impugned in the present Writ Petitions.

4. Heard Mr.B.Kumar, learned senior counsel appearing for the petitioners, as well as Mr.ARL.Sunderasan, learned Additional Solicitor General of India appearing for the respondent.

5. Section 2(1) of SAFEMA enumerates that the provisions of this Act shall apply only to the persons specified in sub-Section (2). Sub-Section (2) stipulates that the persons referred to in sub-Section (1) are the following namely *(a) every person-- (i) who has been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), of an offence in relation to goods of a value exceeding one lakh of rupees; or (ii) who has been convicted under the Foreign Exchange Regulation Act,*



W.P.Nos.14254 to 14256 of 2008

1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), of an offence, the amount or value involved in which exceeds one lakh of rupees; or (iii) who having been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), has been convicted subsequently under either of those Acts; or (iv) who having been convicted under the Foreign Exchange Regulation Act, 1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), has been convicted subsequently under either of those Acts;

6. Pertinently, Section 2(2)(b) of SAFEMA indicates that 'every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974', would fall under the provisions of the Act.

7. Section 2(2)(b)(iv) enumerates that 'such order of detention has not been set aside by a Court of competent jurisdiction'.

8. In the present cases, the detention orders have been set aside by the Hon'ble Supreme Court of India. Therefore, no further action under the



W.P.Nos.14254 to 14256 of 2008

provisions of SAFEMA shall continue. More so, the respondent themselves have dropped all further proceedings in a Criminal Appeal filed before the Hon'ble Supreme Court of India, in respect of Mr.C.Surendrakumar @ C.Surendran, who was also a detainee under COFEPOSA,

9. Taking note of the fact that the writ petitioners have already been exonerated from the provisions of SAFEMA on account of the fact that their detention order under COFEPOSA was set aside by the Hon'ble Supreme Court of India. Thus, the present Writ Petitions are to be considered.

10. Accordingly, these Writ Petitions are allowed and the notice issued under Section 6(1) of SAFEMA (FOPA) Act in reference to OCA/MDS/2909, OCA/MDS/2910, OCA/MDS/2911 respectively, dated 25.03.2004, are hereby set aside. No costs. Connected miscellaneous petitions are closed.

(S.M.S, J.)

(M.J.R, J.)

10.12.2024

Index: Yes/No

Speaking order/Non-speaking order

Sni



WEB COPY



W.P.Nos.14254 to 14256 of 2008

S.M.SUBRAMANIAM, J.
and
M.JOTHIRAMAN, J.

Sni

To

The Competent Authority,
SAFEM (FOPA) and NDPS Act,
Chennai – 17.

W.P.Nos.14254 to 14256 of 2008

10.12.2024