

ITEM NO.9

COURT NO.9

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No. 393/2023 in SLP(Crl) No. 12831/2022

(Arising out of impugned final judgment and order dated 28-02-2023
in SLP(Crl) No. 12831/2022 passed by the Supreme Court Of India)

RAJENDRA SINGH

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s)

(I.A. NO. 183556/2023- INTERVENTION/IMPLEADMENT
IA No. 183559/2023 - EXEMPTION FROM FILING O.T.
IA No. 55708/2023 - EXEMPTION FROM FILING O.T.)

Date : 07-11-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE PANKAJ MITHAL

Amicus Curiae Mr. S. Nagamuthu, Sr. Adv.
Mr. Anish R. Shah, Adv.

For Petitioner(s) By Courts Motion, AOR
Mr. Rohit Kumar Singh , AOR

For Respondent(s) Ms. Garima Prasad, Sr. A.A.G.
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Mrs. Ashly Harshad, Adv.

Mr. Aravindh S., AOR
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Mr. Abbas B, Adv.

Mr. Prafull Bharat, Sr. Adv.
Mrs. Purna Dhall, Adv.
Mr. Piyush Yadav, Adv.
Ms. Akanksha Singh, Adv.
Mr. Prashant Singh, AOR

Mr. Samir Ali Khan, AOR

Mr. Rajiv Kumar Choudhry , AOR

Mr. Shuvodeep Roy, AOR

Mr. Nishanth Patil, AOR

Mr. Sameer Abhyankar, AOR
Mr. Rahul Kumar, Adv.
Mr. Aakash Thakur, Adv.
Mr. Sarthak Dora, Adv.
Mr. Aryan Srivastava, Adv.

Mr. Nalin Kohli, Sr. Adv.
Ms. Diksha Rai, AOR
Ms. Nimisha Menon, Adv.
Ms. Apurva Sachdev, Adv.
Mr. Piyush Vyas, Adv.
Ms. Shruti Agrawal, Adv.

Mr. Jayant Mohan, AOR

Mr. Prakash Ranjan Nayak, AOR
Mr. Debasis Jena, Adv.
Mr. Animesh Dubey, Adv.

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Mr. Amit Kumar Singh, Adv.
Ms. Chubalemla Chang, Adv.
Mr. Prang Newmai, Adv.

Ms. Purna Singh, Adv.
Mr. Guntur Pramod Kumar, AOR
Mr. Dhruv Yadav, Adv.

Ms. Swati Ghildiyal, AOR
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Ms. Devyani Bhatt, Adv.

Mr. Raghvendra Kumar, AOR

Mr. Abhishek Pandey, Adv.
Mr. Prashant Kumar Umrao, AOR

Mr. K. M. Nataraj, A.S.G.
Mr. Kanu Agrawal, Adv.
Mr. Bhuvan Kapoor, Adv.
Mr. Varun Chugh, Adv.
Mr. Ankit Raj, Adv.
Mr. Harish Pandey, Adv.
Mr. Vinayak Sharma, Adv.
Mr. Shashwat Parihar, Adv.
Ms. Indira Bhakar, Adv.
Mr. Rajesh Singh Chouhan, Adv.
Mr. Apoorv Kurup, Adv.
Mr. Vineet Singh, Adv.
Mr. Shreekant Neelappa Terdal, AOR

Mr. Sanjeev Kaushik, Adv.
Ms. Astha Sharma, AOR
Ms. Muskan Surana, Adv.

Ms. Devina Sehgal, AOR
Mr. Dhananjay Yadav, Adv.

Mr. Mahfooz Ahsan Nazki, AOR

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Ms. Drishti Sarat, Adv.
Ms. Swati Mishra, Adv.

Dr. Vikrant Narayan Vasudeva, AOR
Mr. Rohit Lochav, Adv.

Mr. Bijender Chaudhry, Adv.
Mr. Amit Kumar Chawla, Adv.
Mr. Sandeep Singh Dingra, Adv.
Ms. Deepti Hooda, Adv.
Mr. Manider Dahiya, Adv.
Mr. Ajay Pal, AOR

UPON hearing the counsel the Court made the following
O R D E R

By order dated 28.02.2023, this special leave petition [SLP(Crl.) No.12831/2022] was permitted to be withdrawn. However, this Court took *suo motu* cognizance of the aspect regarding the menace of the unlicensed fire arms and passed the following order:

"This special leave petition has been filed challenging the order by which the High Court has declined to pass order in favour of the applicant-petitioner under Section 439 of The Code of Criminal Procedure, 1973. Read order dated 13.02.2023, which is as follows:-

"Learned counsel for the respondent would submit that 12 witnesses out of 15 have already been examined and only three remain. He would seek time, however, to find out whether any of the witnesses has given evidence about the involvement of the petitioner in the incident and if so, in what manner.

List the matter on 28th February, 2023.

Petitioners will be at liberty to file rejoinder in the meantime.

It is again one of those cases where we find that according to the prosecution case, an unlicensed fire

arm was used in commission of the offence involving Section 302 IPC also. We have come across cases where there is this phenomenon of use of unlicensed fire arms in the commission of serious offences and this is very disturbing.

Unlike the Constitution of the United States where the right to bear fire arms is a fundamental freedom, in the wisdom of our founding fathers, no such right has been conferred on anyone under the Constitution of India. The matter relating to regulation of fire arms is governed by Statute, viz., Arms Act, 1959, inter alia.

It is of the greatest significance to preserve the life of all, that resort must not be made to unlicensed fire arms. In particular, if unlicensed fire arms are freely used, this will sound the death knell of rule of law.

We deem it appropriate, therefore, to make use of this case to ascertain and do whatever may be necessary so that the problem of unlicensed fire arms are firmly dealt with by the authorities.

The respondent-State will, accordingly, place an affidavit before this Court as to the number of cases it has registered under the Arms Act or under any other law enabling it to do so for the possession and use or any other aspect relating to unlicensed fire arms. Such an affidavit shall be filed within a period of four weeks from today. The affidavit will be sworn to by the 3 Director General of Police of the respondent State. The affidavit also will indicate the steps taken by the respondent-State towards rooting out the evil of unlicensed fire arms."

As far as the special leave

petition is concerned, learned counsel for the petitioner seeks permission to withdraw the special leave petition. In view of the fact that, this Court has directed an affidavit to be filed in respect of menace of unlicensed fire arms. While we permit the petitioner to withdraw the special leave petition, we retain seisin over the case by taking *suo motu* notice in regard to the aspect of unlicensed fire arms.

List the matter on 20th March, 2023 for consideration of aspect relating to unlicensed fire arms.

We direct that the Registry will indicate this matter as on Court's motion."

By order dated 13.04.2023, notices were issued to all the other States as well as to the Union of India to submit their response to the order dated 28.02.2023, which reads as under:

"Heard Mr. Ardhendumauli Kumar Prasad, learned Additional Advocate General appearing on behalf of the respondent-State of 2 U.P. and Mr. S. Nagamuthu, learned Amicus Curiae.

This is a matter concerning the proliferation of unlicensed fire arms a phenomenon which appears to be very common as can be seen when the Court hears through criminal cases. It has very serious consequences both in terms of the right to life as also the administration of justice

Today, Mr. S. Nagamuthu, learned Amicus Curiae, would submit that it is necessary to deal effectively with the matter, that the Court gets inputs and suggestions from all the States and the Union Territories of the country.

We are of the view that the submission made by Mr. S. Nagamuthu, learned Amicus Curiae is well justified.

Issue notice to all the States/Union Territories. The States/Union Territories will file their response indicating as to the contours of the problem of unlicensed fire arms in the form of figures relating to the cases under the

Arms Act which involves the use of unlicensed fire arms. The Respondents-States/Union Territories will also indicate as to what steps they have taken to deal with the menace of unlicensed fire arms and the figures over the years relating to the cases of unlicensed fire arms.

List the matter on 12.05.2023.

The Registry will issue notice to all the States/Union Territories of the country. The response shall be put in by the Director General of Police in the form of affidavits indicating the statistics and the steps taken to deal with the problem of unlicensed fire arms.

In view of the fact that, the author of the Arms Act is the Parliament of India, we issue notice also to the Union of India, through Ministry of Home Affairs. The Union of India shall also file an affidavit relating to the implementation of the Arms Act and any suggestion it has for strengthening the law.

The affidavits to be filed by the State/Union Territories and Union of India will be served on the learned Amicus Curiae, in advance."

Subsequently, on various dates, the States have filed their response to the menace of unlicensed fire arms. Union of India has also filed two affidavits dated 14.09.2023 and 12.02.2024. Having regard to the importance of the matter, this Court requested learned Senior Counsel, Sri S. Nagamuthu, to assist and appointed him as learned Amicus Curiae.

Learned Senior Counsel/Amicus Curiae has appeared in the matter and has filed his suggestions also on the basis of the responses of

the States as well as the affidavits of the Union of India. The suggestions made by the learned Amicus on 29.10.2023 as also the affidavits filed by the Union of India and on behalf of the States have been perused by us.

Learned Amicus Curiae has stated as under:

"1. Usage of arms and ammunition against the innocent civilians is a vexed issue and a matter of grave concern to the world community. India is no exception. People live under constant fear in the areas where the free flow of illegal arms and ammunition are prevalent in the country. The crime rate involving illegal arms and ammunition is on the increase. Thanks to the founding fathers of the Constitution of India, unlike the American Constitution, we have not given the right to the people to keep and bear arms as a fundamental right. Right to life guaranteed under Article 21 of the Constitution of India, is the primary responsibility of the State to ensure to the people. The Government of India and the States/Uts though, are conscious of the threat to the life of the people on account of proliferation of illegal arms and ammunition, and though the Governments are making the best possible efforts with all the resources at their command, the statistics reveal that crimes involving arms and ammunition are phenomenally on increase and it is slowly slipping out of control. It is this grave concern which has impelled this Hon'ble Court to initiate this suo motu proceeding.

2. The arms and ammunition can be broadly categorized into four groups;

I. Arms and ammunition manufactured under due licenses and possessed by the civilian licensees for specified purposes such as self-protection, etc., that are regulated by the laws such as the Arms Act, Explosives Act, and Explosive Substances

Act.

II. Arms and ammunition which are kept under licenses, but used for illegal purposes, such as commission of crimes in violation of the above regulatory laws.

III. Arms and ammunition which are smuggled into India and held in the hands of anti-social elements and some extremist groups in total violation of any law.

IV. Arms and ammunition which are domestically manufactured without any license or authority whatsoever and being in the hands of the anti-social elements, extremist groups, and even common men.

3. The laws relating to the first and the second categories should be made more effective and stringent so that the licensed arms and ammunition are not used for the commission of anti-social activities or crimes. So far as the categories three and four are concerned, they are the real potential threat to the peace and security of the people. These two categories of arms and ammunition should be totally eradicated from this soil.

4. This Hon'ble Court, having noticed that there are an increasing number of cases reaching this Hon'ble Court involving crimes relating to illegal arms and ammunition, has taken this suo-motu case to explore the ways and means to curb the menace, and to issue necessary orders in this regard. For this purpose, this Hon'ble Court was pleased to issue directions to the Government of India, and the Governments of States and Uts to file affidavits giving the statistics of such cases involving illegal arms and ammunition, and also the steps that are consistently being taken to curb the menace. This Honb'le Court was also pleased to direct the Central and State agencies to give their own suggestions in this regard."

The pertinent paragraphs of the affidavit of

the Union of India dated 14.09.2023 read as under:

"i. The Arms of Act of 1959 and the Arms Rules of 2016 are the governing statutes relating to arms and ammunition. This Act and the Rules contain provisions to regulate the acquisition, possession, use, manufacture, transfer, sale, transport, export, and import of arms and ammunition and punishment for contravention of the provisions of the Act, in order to curb illegal weapons and violence stemming from them.(emphasis supplied)

ii. The police and the public order are the State subjects and therefore it is the primary responsibility of the States/Union Territories concerned to enforce the above regulatory provisions and to curb illegal possession and trade in firearms.

iii. The National Investigation Agency under the National Investigation Agency Act, 2008 is taking active investigation and action against illegal arms.

iv. The Arms Act has been suitably amended enhancing the punishment for the violations of the provisions of the Arms Act and the definitions of some expressions have been expanded.

v. The number of illegal arms and ammunition seized between 2017 to 2021 has been extracted from the NCRB which shows the increasing trend in use of the illegal arms and ammunition.

vi. In paragraph 14 and 15 of the affidavit, it is generally stated that effective steps are taken by the Government of India to curb the illegal firearms including smuggling of the firearms and ammunition into India."

On 12.02.2024, the Union of India has filed its second affidavit and, the existing legislative and regulatory framework has been adverted to in

the said affidavit in paragraph Nos.'4' to '7'
which are extracted as under:

"4. The Arms Act, 1959 and the Arms Rules, 2016 have been enacted to regulate the acquisition, possession, use, manufacture, transfer, sale, transport, export and import of arms and ammunition, and to provide punishment for contravention of the provisions of the Act, in order to curb illegal weapons and violence stemming from them.

5. That in order to check use of illegal arms and streamlining of process to obtain licences for lawful use of arms and ammunition, several amendments to the law dealing with possession, manufacture and other use of firearms and ammunition, i.e., Arms Act, 1959("the Act"), were made to enhance punishments, introduce new offences and create a robust licensing and regulatory procedure.

6. That Government of India on 14.12.2019 has amended the provisions of the Arms Act, 1959 vide the Arms (Amendment) Act, 2019 to curb the illegal use and proliferation of arms and ammunition in the country.

7. That the Arms(Amendment) Act, 2019 provides for enhanced punishment for existing offences and stringent punishment for new offences as stated below:

(i) Section 25(1) provides for enhanced punishment of imprisonment for seven years to imprisonment for life(in place of three to seven years) for illegal manufacture, sale, transfer, conversion, repair, import, export etc. of firearms or ammunition in violation of Sections 5,6 or 11 of the Act.

(ii) Section 25(1A) provides for enhanced punishment of seven to fourteen years imprisonment in place of five to ten years for acquiring, possessing or carrying prohibited arms or prohibited ammunition.

(iii) Section 25(1 AB), states that in

case where such firearms have been taken away by use of force from the police or armed forces, the offence shall be punishable with imprisonment for a term which shall not be less than ten years and which may extend to imprisonment for life.

(iv) Section 25(1AA) provides for enhanced punishment of ten years imprisonment to imprisonment for life (in place of seven years to imprisonment for life) for illegal manufacture, sale, transfer, conversion, repair, test or proof of prohibited firearms or prohibited ammunition.

(v) Section 25(1 B) provides for enhanced punishment of two to five years imprisonment (in place of one to three years imprisonment) for various minor offences under the Act.

(vi) Section 25(6) and 25(7) provides for punishment of ten years imprisonment to imprisonment for life for involvement in organised crime syndicate.

(vii) Section 25(8) provides for punishment of ten years imprisonment to imprisonment for life for involvement in illicit trafficking of firearms and ammunition including smuggled firearms of foreign make or prohibited bore.

(viii) Section 25(9) provides for punishment extending to two years imprisonment or fine of rupees one lakh or both for involvement in rash and negligent use of firearms or in celebratory gunfire endangering human life or personal safety.

(ix) Section 27(3) provides imprisonment for life or death penalty for such offences committed by any person which result in the death of a person.

(x) New definitions have been inserted to address the emergent needs, the same is mentioned below:

- New Section 2(1)(ea) has been inserted to

define licence to include licence in electronic form.

- Section 44(2)(f) has been inserted to include marking on ammunition and define "tracing so as to provide for legal requirement of traceability of firearms and ammunition".
- New forms of offences have been defined in the Act, viz. Illicit trafficking, organized crime, organized crime syndicate, and celebratory gunfire."

Bearing in mind the fact that there is an existing legislative and regulatory framework for checking the menace of unlicensed arms as well as regulating licensed arms, with regard to their production or manufacture, sale etc., the fact remains that the proliferation of factories, workshops producing unlicensed arms which are outside the regulatory framework which are used in crime against society as well as against the State, the need for strict monitoring of the manufacture, possession, sale, transportation etc., of the unlicensed arms by the State, in our view, has become necessary. Union of India in paragraph Nos.14 to 23 of its affidavit has suggested certain measures which are noted. This is to ensure that there is greater accountability achieved in the matter of production of manufacture of illegal arms and ammunition, possession, sale, transportation, use etc.

We have also perused the affidavits filed on behalf of the States.

We find that despite there being an existing law, rules made thereunder, as well as there being a regulatory framework, the implementation of the same is ineffective inasmuch as proliferation of 'factories' and 'workshops' for manufacture of unlicensed arms and ammunition, their sale, transportation, possession and use in crime is on the rise and a matter of concern. Apart from local production, smuggling of arms and ammunition used for crime against society and the State is another matter of concern. We find that there is a lackadaisical approach in the implementation of the existing provisions of the Act and the Rules made thereunder.

In the circumstances, taking into consideration the various submissions made by the learned senior counsel and Amicus and learned Additional Solicitor General appearing for the Union of India and bearing in mind the affidavits filed on behalf of the respective States, we deem it appropriate to constitute a Committee in each of the States as well as Union Territories. The Committee shall be constituted with the following persons:-

- i. Chief Secretary-Chairperson of the Committee.
- ii. Home Secretary- Member.
- iii. Director General/ Inspector General of Police.
- iv. Law Secretary.
- v. One expert in the field of ballistics to be nominated by the Chief Secretary.

The five member Committee constituted as above shall submit an action plan on the following tasks to be undertaken by it with time schedule:-

- i. To formulate an action plan for the implementation of the Act and for rules made thereunder in the respective State/UT.
- ii. Inspection and audit of the existing licensed as well as unlicensed factories/workshops dealing with arms and ammunition through the notified authorities or officers.
- iii. To secure the data with regard to manufacture, sale, transportation of illegal arms and ammunition.
- iv. Steps to be taken with regard to prevention of smuggling of illegal arms and ammunition.
- v. A study to be conducted on the use of illegal arms and ammunition in crime against society and against the State and steps for its

prevention.

vi. Any other aspect that the Committee may think it just and proper to delve upon.

The aforesaid action plan shall be placed for consideration of this Court within a period of ten weeks from today.

Apart from this, for the aid and assistance of the said Committee, the suggestions made by the learned Amicus Curiae may be conveyed by the learned respective counsel appearing for the State Governments to the respective Chief Secretaries of the State. The same could be referred to by the Committee to be constituted for the purpose of formulating the action plan to be placed before this Court.

It is expected that the Committee referred to above shall be constituted at the earliest and an action plan of the Committee, as directed, shall be placed before this Court at the earliest.

It is further directed that a similar Committee shall be constituted in the Union Territories of the concerned authorities/officers which shall comply with the aforesaid directions.

List on 30.01.2025.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(DIVYA BABBAR)
COURT MASTER (NSH)