



WP (MD) No. 1941 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.11.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Writ Petition (MD) No. 1941 of 2018

K. Karmegam
Advocate
Son of Karuppaiah
No.1/108, Meenakshi Nagar 1st Street
Nagankulam
Madurai - 14

.. Petitioner

Versus

1. The Union of India
rep. by its
The Secretary to Government of India
Ministry of Home Affairs
New Delhi
2. The Chief of National Investigation Agency
CGO Complex
Lodhi Road
New Delhi - 110 003
3. The Director
Central Bureau of Investigation
New Delhi
4. The State of Tamil Nadu
rep. by its
Home Secretary to Government
Secretariat, Chennai - 600 009



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5. The Director General of Police
No.4, Dr. Radhakrishnan Road
Mylapore, Chennai - 600 004

6. The Commissioner of Police
Greater Chennai
Chennai

7. The Commissioner of Police
Tiruchirapalli City, Trichy

8. The Superintendent of Police
Thanjavur District
Thanjavur

9. The Superintendent of Police
Tuticorin District
(R9 impleaded as per order dated
08.03.2019)

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to take up the investigation pertaining to the cases involving arrest and recovery of illegal and unlicensed pistols and direct the respondent Nos. 4 to 8 to transfer the entire case records pertaining to the illegal Arms Trade Cases registered at Chennai and Trichy and to direct the respondent Nos. 1 to 3 to file periodical status report pertaining to this case and to direct the respondents herein to curb the illegal possession and use of unlicensed Arms by strictly enforcing the provisions of the Arms Act, 1959 and Arms Rules, 2016.

For Petitioner : Mr. G. Sakthi Rao
For Respondents : Mr. R. Murugappan
Senior Panel Counsel for Central Govt for R1

Mr. K. Govindarajan for R2

No appearance for R3

Mr. N.GA. Natarajan
Government Advocate for R4
Mr. T. Senthil Kumar
Additional Public Prosecutor for RR5 to 9



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ORDER

[Order of the Court was made by **R. MAHADEVAN, J.**]

The petitioner, who is practising as an Advocate, has filed this writ petition seeking to issue a Writ of Mandamus directing the respondents 1 to 3 to take up the investigation pertaining to the cases involving arrest and recovery of illegal and unlicensed pistols and direct the respondent Nos. 4 to 8 to transfer the entire case records pertaining to the illegal Arms Trade Cases registered at Chennai and Trichy and to direct the respondent Nos. 1 to 3 to file periodical status report pertaining to this case and to direct the respondents herein to curb the illegal possession and use of unlicensed Arms by strictly enforcing the provisions of the Arms Act, 1959 and Arms Rules, 2016.

2. In the affidavit filed in support of the writ petition, the petitioner would contend that he had read from the news papers that some of those who were in possession of unlicensed pistols were arrested by the Tamil Nadu State Police at Chennai and Trichy and the pistols were recovered from them. The petitioner also came to know through news channels that those who were arrested had affiliation to dreaded organisations such as ISIS etc., and they indulged themselves in raising funds for their organisation through the illegal arms trade. The petitioner also referred to The Arms Act, 1959 and submitted



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that it aimed to regulate the possession and use of arms, powers of the licensing authorities to grant licences to the needy as per the Act. According to the petitioner, the provisions of the Act and the Rules made thereunder are being flouted with many illegal unlicensed arms trading, however, the same are not properly investigated by the police authorities.

3. The petitioner referred to a news item published in news papers and submitted that one Pradeep was arrested along with another accused for illegally transporting unlicensed pistols with 20 rounds of bullets along with Rs.4 lakhs of Indian fake currency in Guwahathi Express Train. He also referred to the arrest of a Police Constable by name Parameswaran of Nammalwarpettai, Chennai in connection with illegal arms trade. Further, one Nagarajan and Siva were arrested by Thanjavur District Special Police at Trichy and recovered unlicensed pistols with 10 rounds of bullets. According to the petitioner, even though investigation was done by the Tamil Nadu Police, it seems that the accused have already sold out illegal and unlicensed pistol to some top politicians, businessmen and to some advocates at Chennai, Coimbatore and Tirupur District and they are indulging in such kinds of illegal arms trade for the past few years. As the top politicians have purchased illegal pistols, the State Police is not in a position to arrest them or disclose the name of the persons who are in possession of such illegal arms. It is stated by



the petitioner that the State investigation agency cannot make an impartial and full fledged investigation in the matter due to the involvement of big wig politicians and therefore, a Centralized investigation Agency such as Central Bureau of Investigation (CBI) is necessary to unearth the entire crime connected with the illegal Arms trade.

4. Repudiating the averments made in the affidavit filed in support of the writ petition, a counter affidavit has been filed on behalf of the first and second respondent in which it was stated that the respondent No.2 is an investigation agency constituted to investigate and prosecute offences which are affecting the sovereignty, security and integrity of India as set out in the National Investigation Agency Act, 2008. It is further stated that the second respondent is empowered to investigate the offences which are morefully included in Schedule of the Act under Section 2 (1) (f). It is also stated that the second respondent will take up investigation into any offence, if directed by the Central Government as contemplated under Section 6 of the NIA Act, 2008. Thus, it is contended by the respondents 1 and 2 that only if the Central Government issues any direction to investigate a particular case, the second respondent will cause an investigation. The second respondent also referred to an order dated 08.03.2019 passed by this Court in which certain queries were raised namely (i) For the past 5 years, how many cases of sale and purchase of



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possession of illegal Arms have been registered? (year wise details have to be given). (ii) How many persons have been arrested and what are all the sections have been invoked? (iii) Whether all these cases have been transferred to National Investigation Agency as the illegal Arms trade is All India Phenomenon? (iv) What is the stage of these cases? In the counter affidavit, the second respondent has replied that *per se* the second respondent is not empowered to take up the cases involving illegal Arms trade for investigation unless such offences are listed as one of the scheduled offences under Section 8 of the NIA Act. It is also further stated that so far no cases involving illegal trade of Arms have been transferred to the National Investigation Agency and therefore, such cases have not been investigated so far by the second respondent. At the same time, for yet another query as to how many weapons have been seized in various cases investigated by the State and Central Government, it was replied that during investigation of cases by the State Government, 132 weapons were seized in the past five years before such cases were referred to and investigated by the second respondent. Similarly, 69 weapons were seized by the second respondent in the past five years in the cases investigated by them. The second respondent therefore submitted that unless an offence is listed as one of the scheduled offences under Section 8 of the Act and it was referred to by the Central Government, the second respondent is not empowered and has no jurisdiction to investigate a case.



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Accordingly, the second respondent prayed for dismissal of the writ petition.

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5. On behalf of the respondents 4, 5 and 6, a status report was filed by the Superintendent of Police, Organised Crime Unit-II, Chennai on 22.03.2018. In the status report, reference was made to the case in Crime No. 46 of 2018 registered against one Pradeep and others, referred to by the petitioner in the affidavit filed in support of the writ petition. It is stated that on the basis of credible information that Pradeep, along with one Kamal are going to Malda District, West Bengal on 21.01.2018 to purchase illegal arms, their movement were monitored and on 25.01.2018, when they were proceeding in a train to Vijayawada, the investigating agency intercepted them. At that time, the duo jumped from the moving train at Thiruvottriyur Railway Station, and attempted to escape. After an intense chase, they were caught and it was found that they are in possession of 5 pistols, ammunitions and money. In this context, the case in Crime No. 46 of 2018 was registered under Section 3, 25 (1B) (a) of The Arms Act and 489-C of the Indian Penal Code on the file of Vepery Police Station. Considering the serious nature of offence, the Director General of Police in his proceedings dated 31.01.2018 transferred the case to be investigated to the Crime Branch CID, Chennai. For the purpose of investigating the case, Tr.S. Sathiyamoorthy, Deputy Superintendent of Police, Organised Crime Unit-II, CBCID, Chennai was specifically deputed. In the



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meantime, on 01.02.2018, one Sathish Kumar/A-3 of Perambur surrendered before the learned Judicial Magistrate, Ambattur in this case and he was remanded to judicial custody. On 06.02.2018, an application has been filed under Section 167 (2) of the Code of Criminal Procedure before the learned XI Metropolitan Magistrate, Saidapet, seeking police custody of the accused and accordingly, police custody of the accused 1 and 2 was granted and they were interrogated. Similarly, a petition was filed for police custody of A-3 and his statement was also recorded. Based on the statement given by the accused several incriminating materials have been recovered and produced before the court. It is also stated that the applications filed by A-1 to A-3 for bail was dismissed and they are under incarceration till date. Therefore, it is submitted that a fair investigation is being conducted by the investigation agency and prayed this Court to accept the status report filed on behalf of the investigating agency.

6. A further status report was filed by the Inspector of Police, Organised Crime Unit, CB CID, Trichy City dated Nil referring to the case of illegal possession and sale of unlicensed Arms and ammunition registered in Crime No. 156/2018 under Section 25 (1-A), 25 (1-B) (a) of Arms Act read with Section 399 and 402 of the Indian Penal Code. It is stated that on 26.01.2018 at 22.00 hours, based on credible information, a search was conducted by the Inspector of Police, Cantonment Police Station along with



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his party in Kalpana Hotel near Central Bus Stand, Tiruchirapalli. During such search in Room No.43, it was found that the accused were in possession of 2 Nos. of 7.65 mm pistol and 10 Nos. 7.65 mm bullets. For possession of such illegal arms, they were arrested and remanded to judicial custody. Subsequently, as per the proceedings dated 28.02.2018 of the Director General of Police, Tamil Nadu, the case was transferred to CB CID, Organised Crime Unit, Trichy. Upon such transfer, the Inspector of Police, CB CID, Organized Crime Unit submitted applications for police custody of the accused, their statements were recorded based on which the team searched the houses of Kalaisekar and Ettappan on 13.02.2018 at Tirunelveli where they have recovered incriminating materials. Based on the information given by the accused, the investigation team proceeded to Bina, Madhya Pradesh on 08.02.2018 where they have arrested Krishna Murari Tiwari with the help of Bina Police Station officials, who is said to be the supplier of arms in the case. After his arrest, a transit warrant was obtained and thereafter he was produced before the learned Judicial Magistrate VI, Trichy and remanded to judicial custody. The accused Krishna Murari Tiwari was also taken into judicial custody for three days and the *modus operandi* of the crime was explored through him. According to the investigation officer, based on the confession statement of Krishna Murari Tiwari, intensive search is being conducted to apprehend the remaining accused from Sagar District, Madhya Pradesh. It is



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therefore submitted that a fair investigation is being conducted by the investigation officer and prayed this Court to take the status report on record.

7. The seventh respondent, Commissioner of Police, Tiruchirapalli City has filed a counter affidavit repudiating the various averments made in the affidavit filed in support of the writ petition. The seventh respondent denied the allegation of the petitioner that illegal arms trading is taking place every day through out the Nation. The allegation that many anti-social elements are in possession of country made pistols and revolvers and using them for illegal activities was also denied by the seventh respondent. According to the seventh respondent, such allegations made by the petitioner are bald, vague and without any substance. It is stated that the respondents are keeping a vigil to prevent illicit sale and possession of arms. Referring to the investigation conducted in Crime No. 156 of 2018 registered on the file of Cantonment Police Station, Trichy, which was subsequently transferred to the file of CB CID, Organized Crime Unit, Trichy, it is stated that the investigation has been conducted fairly and the case has been investigated without any lapse. It is further stated that between 2014 to 2017, there was no case registered in Trichy District and in 2018, the case in Crime No. 156 of 2018 was registered. In that case, 6 out of the 8 accused have been arrested and steps are being taken to arrest the remaining 2 accused outside the State. Therefore, it is



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submitted that the respondents are taking earnest efforts to curb the illegal trade of Arms and effectively controlling the possession and use of illegal and unlicensed arms and prayed for passing appropriate orders in this writ petition.

8. The ninth respondent has filed a status report dated 25.03.2019 referring to the investigation conducted in crime No. 879 of 2018 registered for the offences under Sections 353, 307, 506 (ii) of Indian Penal Code and Section 25 (1) (b), 27 of Arms Act registered against Saravana Kumar and 9 others. According to the ninth respondent, the case was registered against Saravana Kumar and 9 others for having committed the offence of attempt to murder the police party with unlicensed arms while they were intercepted on 28.12.2008. During search, the investigation agency recovered 8 unlicensed pistols, 7 magazines and 103 rounds. It is stated that one Mr. Prabhu @ Michael Stanis Prabhu, an Advocate, was arrayed as A-7 in this case based on the confession statement of A-1. On such confession, when a search was made in the house of A-7, 7 pistols and five rounds of bullets were recovered. After investigation, a charge sheet was filed and the same was taken up in S.C. No. 13 of 2010 on the file of the Additional Sessions Judge No.1, Thoothukudi. After due trial, the Sessions Court acquitted the accused Nos. 1 to 8

9. The learned counsel appearing for the petitioner reiterated the



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averments made in the affidavit filed in support of the writ petition and contended that illegal arms sale or trade is thriving unabated. There is an increase in number of cases than the past and it requires not only a thorough investigation but such investigation should be impartial. The respondents police did not refer to any cases involving businessmen and Very Important Persons (VIP) carrying on business or those who are holding very high position in Government Service etc., Therefore, the learned counsel for the petitioner submits that illegal arms trade is thriving and the respondents could not effectively curb the menace. Taking into account the gravity and seriousness of the issue, the learned counsel appearing for the petitioner prayed this Court to issue suitable direction to the third respondent to take up investigation in cases where there are recovery of arms or it relates to illicit sale or possession of arms.

10. On the above contention, we have heard the learned Additional Public Prosecutor appearing for the respondents 5 to 9, who submitted that, the State Police is competent to deal with the cases involving illegal sale and recovery of arms. The cases registered so far have been investigated with prudence and recoveries were made without any lapse. The petitioner, without pointing out any lapses on the part of the investigating agency in conducting investigation under The Arms Act, has filed this petition seeking to transfer



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the cases to the third respondent. The petitioner has not brought out any material to substantiate the prayer sought for in this writ petition. A blanket relief is sought for by the petitioner, largely based on newspaper reports and it need not be countenanced. If the prayer of the petitioner is accepted and the on-going investigation into the cases already registered and taken up for investigation by the respondents 5 to 9 is transferred to the third respondent, it would amount to discrediting the genuineness of the investigation initiated and conducted so far. The learned Additional Public Prosecutor would further contend that there is nothing on record to suggest that the on-going investigations are required to be transferred to the third respondent and therefore, he prayed for dismissal of the writ petition.

11. We have heard the counsel for both sides and perused the materials placed on record. The petitioner has filed this writ petition to direct the respondents 4 to 9 to transfer all the cases relating to illegal possession and/or recovery of arms to the respondents 1 to 9 for the purpose of conducting investigation. At the outset, for the purpose of seeking such a relief, the petitioner did not place any materials before us. As pointed out by the learned Additional Public Prosecutor appearing for the respondents 5 to 9, the petitioner has filed this writ petition only on the basis of news paper reports. Further, the petitioner did not point out any lapse in the investigation



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conducted in the cases registered by the respondents 5 to 9 so far. However, the apprehension of the petitioner appears to be that the illegal sale and possession of arms is thriving and mostly it goes unchecked.

12. It is no doubt true that proliferation of unlicensed arms trade or illegal possession of arms, if goes unchecked, will be a threat to the security and interest of the Nation. The possession of arms is governed by The Arms Act, 1959. The object with which the Act was enacted is to ensure that dangerous weapons of military patterns should not be made available to civilians, particularly the anti-social elements. In order to regularise the possession of arms by only those who require it for their self-defence, certain parameters are laid down under the Act, including issuance of a licence to hold and/or possess arms. The power to grant such licence is conferred upon the competent authority under the Act. The competent authority has to ensure, before issuing a licence, that the applicant's antecedents or propensities is thoroughly verified in the light of Section 7, 8, 9 and 10 of The Act which specifically prohibits acquisition or possession by or of sale or transfer of arms to certain class of persons.

13. It is noteworthy to mention here that of late, instances of crimes involving use of unauthorised and unlicensed fire-arms galore and it is



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required to be curtailed. The status reports filed by the investigation officers, relating to the investigation conducted in the cases registered under The Arms Act, mentioned above, prima facie shows that the respondents 5 to 9 have conducted the investigation in those cases in an appropriate manner. At the same time, the number of cases registered so far would only stand testimony to the fact that illegal trade and/or sale of arms is thriving and it will be a menace to the society, if it goes unchecked.

14. Therefore, it would be appropriate to direct the respondents 5 to 9 to conduct thorough enquiry in cases involving possession and sale of illegal arms by scrupulously following the procedures contemplated under The Arms Act and take all earnest efforts in investigating those cases swiftly, without any lapse. They are also directed to keep a vigil and monitor the sale and/or possession of unlicensed arms continuously.

15. With the above direction, this writ petition is disposed of. No costs.

(R.M.D., J) (J.S.N.P. J)

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Index : Yes / No

Internet : Yes / No

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To

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rep. by its
The Secretary to Government of India
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New Delhi
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CGO Complex
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