

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14857 of 2016 (O&M)
Date of decision: 10.08.2016.

Arrive Safe Society of Chandigarh

....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ravi Kamal Gupta, Advocate for the petitioner.

S.S. SARON, J.

Heard learned counsel for the petitioner at considerable length.

The Public Interest Litigation has been filed by the petitioner - Arrive Safe Society ('Society' - for short) for directing the respective State Governments, i.e. State of Haryana, State of Punjab and also the National Highway Authority of India ('NHAI' - for short) (respondents No. 1 to 3), for fixing accountability of the officials concerned of the Public Works Department (Buildings and Roads) of Haryana, Punjab and NHAI and prosecuting them under Section 304-A/336 Indian Penal Code ('IPC' - for short) since they have failed to follow the prescribed Government manuals (Annexures P-5 and P-6) or any other manual available/applicable, in order to ensure that the roads and bridges are constructed as per their own guidelines and provide safe

travelling to the commuters and because of whose negligence hundreds of innocent lives were being lost as would be apparent from photos (Annexure P-7/ colly.) and report published by Government of India (Annexure P-8).

During pendency of the petition, Civil Misc. Application No.9251 of 2016 was filed by the petitioner in terms of Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for amendment/modification of the prayer in the writ petition. By way of amendment, it is prayed that a mandamus be issued to the respective State Governments directing them for creating a system/mechanism for fixing accountability of the officials concerned of the Public Works Departments (Buildings and Roads) of Haryana, Punjab and NHAI for any road accident occurring due to faulty/poor road infrastructure and missing safety norms on roads and bridges, and take appropriate action in accordance with law against the erring officials in order to ensure that the roads and bridges are constructed as per their own guidelines and because of whose negligence many innocent lives were being lost daily, as would be apparent from photos (Annexure P-7/ colly.) and report published by the Government of India (Annexure P-8). It is further prayed for fixing the accountability of the erring officials and compelling them to adequately compensate the hapless victims of such accident from their own funds/salary within a fixed time period.

The petitioner - Society, it is submitted, is an Indian Non-Government Organization (NGO) working on developing road

safety programs to increase knowledge, awareness and skills amongst all types of road users. Besides, it educates the youth about liquor abuse. It is further submitted that it also works closely with the traffic police departments to improve the law enforcement regarding drunken driving. In addition to being a Member of the Road Safety Councils of Punjab and Chandigarh, the Society has earned several accolades like the Volvo Sustainable Mobility Award - 2013, Prince Michael International Road Safety Award for National Service, State Award for Meritorious Service to name a few.

It is submitted that on the constant efforts put in by the petitioner (NGO), the High Court in CWP No.25777 of 2012 directed the States falling within its jurisdiction to remove the liquor vends from Highways (be it National or State) as also from the service lanes abutting these Highways, so as to curb the menace of free availability of liquor and reduce the number of deaths because of drunken driving. Not only this, the States were directed to remove all the advertisements, in any form regarding sale of liquor from Highways and the authorities were directed to ensure that the liquor vends were neither visible nor accessible from the Highways. Contempt petition i.e. COCP No.2194 of 2014 was filed by the petitioner - Society for flouting the above orders, which is pending.

It is further submitted that the petitioner-Society in 2015 filed petitions i.e. CWP No.5249 of 2015 and CWP No.5827 of 2015 challenging the excise policies of the States of Haryana

and Punjab. Against the orders passed in CWP No.5249 of 2015 and RA No.168 CWP of 2015, the petitioner filed Special Leave Petitions in the Hon'ble Supreme Court seeking directions to the respondent-State to initiate the practice of issuing bills at all liquor vends across the State irrespective of their locations. Other various public interest litigations that have been filed by the petitioner are mentioned.

The authorized person who has filed the petition on behalf of the petitioner - Society, states that he is primarily a Software Engineer and works with various Government organizations in India and abroad and this is how he earns his livelihood. He approached the concerned authorities for redressing his grievance but no heed was paid to the same and no action was taken against the delinquent employees. Copies of the complaints/ representations (Annexure P-3/ colly.) stated to have been filed by him have been appended with the petition. He thus left with no other alternate remedy has filed this petition stating that many of the unfortunate incidents/accidents stood reported by the Press and media too but no heed has been paid by the welfare States. Copies of Press reports (Annexure P-4/colly.) have been attached.

An opening caveat has been made in the petition stating that the expression 'roads' in this petition would include all kinds of roads be they constructed within the city, village, district roads (major district roads and other district roads), State Highway and National Highway. The term 'bridge' or 'bridge structure', it is stated, wherever used would include major

bridges, minor bridges and slab and pipe culverts. In India, it is stated; bridges of length exceeding 60m are termed as 'major bridges' and others are classified as 'minor bridges', besides, the term 'bridges' would mean bridges within the city, village or district roads and National/State Highways as well.

A reference is made to the 234th Report of the Law Commission of India titled as, 'Legal Reforms to Combat Road Accidents'. The figures mentioned in the opening paragraphs in 2009 have been mentioned giving the statistics of road network of 3.314 million kilometres in India being one of the largest road networks in the world. Besides, it is mentioned that more than 100,000 Indians were dying every year in road accidents and more than a million were injured or maimed. It is mentioned that many years ago a study found that road accidents cost the country a sum of Rs.550 billion every year and India's share in the world fatalities was increasing. So far China had topped the list of most number of fatal road accidents and India finished a close second. However, the latest statistic showed that while China had managed to decrease its fatality, India had not learnt much. The total road length of India, it is mentioned, was about 12% of the total road network but India's percentage in road injury was 5.4 per cent of the world total.

The petitioner has further mentioned regarding increase of automobiles, unregulated Indian roads and number of casualties on the roads being multiplied for no fault of the driver. A mention has also been made to the various studies conducted.

In para 20 of the petition, the initial prayer made in the petition for prosecuting the officials concerned of the Public Works Department (Buildings and Roads) of Haryana, Punjab and NHAI under Section 304-A/336 IPC has been reiterated stating that they had failed to follow the prescribed Government manuals (Annexures P-5 and P-6) or any other manual available/applicable in order to ensure that the roads and bridges are constructed as per their own guidelines and provide safe travelling to the commuters and because of whose negligence hundreds of innocents lives were being lost as would be apparent from the photos (Annexure P-7/ colly.) and report published by Govt. of India (Annexure P-8) and for fixing accountability of the erring officials and compelling them to adequately compensate the hapless victims of such accidents from their own funds/salary within a fixed time frame.

The averments as made in the petition are general in nature and give the facts and figures of the road accidents that have occurred in India. Primarily registration of criminal cases against the officials with simultaneous departmental action has been sought; besides, for creating a system/mechanism for fixing accountability of the officials concerned for any road accident occurring due to faulty/poor road infrastructure and missing safety norms on the roads and bridges, and also compelling the erring officials to adequately compensate the victim, who it is stated was suffering because of somebody else's omission or commission of an act so as to ensure that the Road Engineers are held

accountable and would maintain roads and bridges to avoid such accidents in future. This, it is stated, would help in curbing the ever rising road accidents that were killing a large numbers of people every day and would deter future unforeseen unnatural deaths. A mention is made to two separate recent accidents that had occurred and involved the lives of innocent citizens in which First Information Reports (FIRs) were got registered by the victims. The photocopies of the news report and FIR (Annexure P9) have been attached.

In terms of Civil Misc. Application No.9251 of 2016, though a prayer has been made for amending the prayer clause in the writ petition; however, the tenor of the amendment prayed for shows that it is the head note of the petition only which is prayed for being amended and not specifically the prayer clause in the main petition. Besides, the petitioner in its petition primarily seeks prosecution of the erring officials who are stated to be constructing roads and bridges in violation of the guidelines. In terms of the amendment, it is prayed that a mandamus be issued for directing the respective State Governments for creating a system/mechanism for fixing the accountability of the officials concerned of the Public Works Department (Building and Roads) of Haryana, Punjab and NHAI for any road accident occurring due to faulty/poor road infrastructure and missing safety norms on roads and bridges and taking appropriate action in accordance with law against the erring officials in order to ensure that the roads and bridges are constructed as per their own guidelines.

It is to be noticed that there is no particular reference to any officials or official who is stated to be constructing the roads and bridges in violation of the guidelines leave alone mentioning which particular roads or bridges that have been constructed in violation of guidelines.

On the asking of the Court, learned counsel for the petitioner has referred to a letter addressed by the petitioner on 20.01.2014 to the Senior Superintendent of Police, Sri Muktsar Sahib, Punjab relating to a road accident that had occurred on 17.01.2014 in which four persons died as the car fell in the Rajasthan feeder canal. It is mentioned in the said letter that a request was made to include by name the concerned Executive Engineer, Sub-Divisional Engineer and Junior Engineer of the area of the Public Works Department (Buildings and Roads) as accused in the FIR and they should be charged for gross negligence under Section 304-A IPC and under any other relevant Act of the IPC.

The learned counsel for the petitioner was asked as to what was the basis for including the names of those officials and in response, he has referred to a news items published in 'The Tribune' dated 18.01.2014 (Annexure P-4). In the said news item, it is mentioned that eyewitnesses said that the car went off the road as it tried to avoid a pothole. The said information, therefore, is based on newspaper reports. Other newspaper reports have also been appended as Annexure P-4/ colly. These newspaper reports in fact have no evidentiary value.

In **Samant N. Balakrishna etc. v. George Fernandez and Ors**, AIR 1969 SC 1201, the Supreme Court observed that a news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand, secondary evidence. It was observed that it is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process, the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. It was observed that a fact has first to be alleged and proved and then the newspaper reports could be taken in support of it but not independently.

In **Ravinder Kumar Sharma v. State of Assam**, (1999) 7 SCC 435, as regards newspaper reports, it was held that the presumption of genuineness attached under Section 81 of the Evidence Act to newspaper reports cannot be treated as proof of the facts stated therein and that the statement of fact in newspapers are merely hearsay. Reliance was placed on an earlier decision in **Laxmi Raj Sethi v. State of T.N.**, (1988) 3 SCC 319. In the said case, it was held by Hon'ble the Supreme Court that the Court cannot take judicial notice of the facts that stated in a news item published in a newspaper. A newspaper, it was observed, is not one of the documents referred to in Section 78 (2) of the Evidence Act by which an allegation of fact can be proved. The presumption of genuineness attached under Section

81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein. A statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence unless proved by evidence *aliunde* by the maker of the statement appearing in Court and deposing to have perceived the fact reported. Besides, in **S.A. Khan v. Ch. Bhajan Lal**, (1993) 3 SCC 151, it was held that newspaper report is a hearsay secondary evidence, which cannot be relied on unless proved by evidence *aliunde*. Even absence of denial of the statement appearing in the newspaper by its maker would not absolve the applicant of his obligation of proving the statement.

Therefore, the position is that the petitioner is stated to have written a letter to the Senior Superintendent of Police, Sri Muktsar Sahib, relating to a road accident that had occurred on 17.01.2014 in which four persons died as the car fell in the Rajasthan feeder canal. A request, it is stated, was made to include by name the concerned Executive Engineer, Sub-Divisional Engineer and Junior Engineer of the area of the PWD as accused in the FIR and that they should be charged for gross negligence under Section 304-A IPC and under any other relevant provision of the IPC. In this regard, it is for the Senior Superintendent of Police to act on the letter and make inquiries and this Court is not normally interfere in the field of investigation, as it is the sole domain of the investigating authorities whose powers to investigate in respect of cognizable criminal offences are unfettered. The petitioner was at least liable to show as to what

action had been taken on its letter. It has a remedy of seeking information under the Right to Information Act, 2005. It is not as if it is to be presumed that there has been inaction and an inquiry was not started.

In this context, it may also be noticed that the petitioner primarily seeks to get criminal cases registered and get them investigated and that too without any specific material as to who had committed the cognizable offence and, if so, what cognizable offence had been committed and in relation to which road or bridge where the accident is stated to have occurred. It is not in dispute that information which makes out a cognizable offence is liable to be reported to be Station House Officer (SHO) of the police station concerned where a cognizable offence has been committed. On the basis of the same, an FIR is liable to be registered and investigated. However, lodging of FIR without specifically disclosing the commission of a cognizable offence and by making mere allegations, which may not be substantiated, would result in unnecessary harassment and even oppression of someone who may not be actually liable, but he merely happens to be an officer of the Public Works Department (Buildings and Roads) of the Governments of Haryana, Punjab and NHAI. Therefore, credible information is liable to be furnished which discloses the commission of a cognizable offence and that too before the SHO of the police station concerned so that an FIR is registered and the case investigated. Such information cannot normally be based on mere newspaper reports.

The learned counsel for the petitioner has made a reference to the reports of the data (Annexure P-8) collected, which has been published by the Government of India. The data (Annexure P-8) is quite voluminous and relates to, 'Road Accidents in India-2015'. Section XI relates to 'Nature and Causes of Road Accidents'. It is *inter alia* mentioned that 'defect in road condition' resulted in 7,314 (1.5) accidents, the number of persons killed in road accidents is mentioned as 2,733 (1.9) and injured are 6,122 (1.2); besides, there are other classifications of roads accidents that have been mentioned like; fault of driver, fault of cyclist, fault of driver of other vehicles, fault of pedestrian, weather condition, fault of passenger, poor light, falling of boulders, neglect of civic bodies, stray animals, other causes/causes not known.

Thereafter, in Section XI under the heading 'Analysis of Other Parameters of Road Accidents' the conditions have been mentioned which *inter alia* include the following two conditions:-

"Potholes accounted for a share of 2.2 per cent (10,876 road accidents) and 2.3 per cent (3,416 road accident fatalities) in total road accidents during 2015. The State/UT-wise details indicating various road conditions are given at Annexure-XXXVIII.

Speed breakers accounted for 2.2 per cent (11,084 road accidents) and 2.3 per cent (3,409 road accident fatalities) in total road accidents

during 2015. The State/UT-wise details indicating various road conditions are given at Annexure-XXXVIII."

The above data shows that potholes accounted for a share of 2.2 per cent and speed breakers accounted for 2.2 per cent. A reference has also been made to Annexure-XIX of Annexure P-8 relating to, 'Accidents classified according to Type of Location during the calendar year 2015', which insofar as States of Haryana, Punjab and UT Chandigarh are concerned, is as follows:-

Sr. No.	States/ Uts	Near bus stop			Near petrol pump			At pedestrian crossing			Affected by encroachments			Narrow bridge or culverts		
		Total accidents	Persons killed	Persons injured	Total accidents	Persons killed	Persons injured	Total accidents	Persons killed	Persons injured	Total accidents	Persons killed	Persons injured	Total accidents	Persons killed	Persons injured
8.	Haryana	693	288	597	487	238	485	614	268	605	226	143	275	324	155	292
21	Punjab	485	338	266	305	236	185	238	180	115	58	40	34	125	81	84
31	Chandi- garh	5	6	0	24	7	27	0	0	0	0	0	0	0	0	0

A reference has also been made to, 'Total Number of Road Accidents in India classified according to cause of Accidents: 2015' Annexure XXVII, which insofar as States of Haryana, Punjab and UT Chandigarh, is as follows:-

Sr. No.	States/ Uts	Neglect of civic bodies			Stray animals			Other causes/causes not known			Total		
		Total no. of road accidents	Number of persons		Total no. of road accidents	Number of persons		Total no. of road accidents	Number of persons		Total no. of road accidents	Number of persons	
			Killed	Injured		Killed	Injured		Killed	Injured		Killed	Injured
8.	Haryana	0	0	0	183	109	295	663	352	682	11174	4879	10794
21	Punjab	39	15	21	95	71	45	813	630	592	6702	4893	4414
31	Chandi- garh	0	0	0	0	0	0	0	0	0	416	129	331

A further reference has been made to, 'Accidents, Persons Killed and Injured classified according to type of Manoeuvre during the calendar year 2015', Annexure XXXI, which

insofar as States of Haryana, Punjab and UT Chandigarh are concerned, is as follows:-

Sr. No.	States/ Uts	Diverging			Merging			Crossing			Stationary			Temporarily held up		
		Total no. Of road accidents	Number of persons		Total no. of road accidents	Number of persons		Total no. of road accidents	Number of persons		Total no. of road accidents	Number of persons		Total no. of road accidents	Number of persons	
			Killed	Injured		Killed	Injured		Killed	Injured		Killed	Injured		Killed	Injured
8.	Haryana	313	125	315	228	101	198	4153	1871	4100	206	109	144	234	110	225
21	Punjab	577	390	400	237	179	158	1479	1094	935	210	177	122	86	58	74
31	Chandi- garh	40	14	27	43	20	25	153	58	92	0	0	0	0	0	0

A reference has also been made to, 'Accidents, Persons Killed and Injured classified according to Road Condition during the calendar year 2015', Annexure XXXVIII, which insofar as States of Haryana, Punjab and UT Chandigarh are concerned, is as follows:-

Sr. No.	states/ Uts	Good surface			Loose surface			Rutted/pot holes			Road under repair/construction			Corrugated/wavy road		
		No. of accidents	Persons killed	Persons injured	No. of accidents	Persons killed	Persons injured	No. of accidents	Persons killed	Persons injured	No. of accidents	Persons killed	Persons injured	No. of accidents	Persons killed	Persons injured
8.	Haryana	8419	3394	8150	758	405	605	25	9	19	62	21	97	23	12	12
21	Punjab	4674	3487	3130	653	433	587	246	177	208	203	162	97	65	67	31
31	Chandi- garh	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR

The first of the above tabulations to which a reference has been made, mentions the accidents that have occurred due to narrow bridge or culverts, which in the State of Haryana are 324, in Punjab are 320 and in Chandigarh are 'nil'. However, the period when the bridge was constructed and when with the increase of traffic it had become narrow and required widening is not mentioned. These aspects are to be considered by the State Governments concerned or the Union Territory Administration. Merely because accidents have been caused due to narrow bridges or culverts, criminal prosecution or departmental action cannot be initiated.

The second tabulation to which a reference has been made by the learned counsel for the petitioner relates to total number of road accidents in India classified according to cause of accidents, in which a mention has been made to neglect of civic bodies, stray animals and other causes/causes not known. For these accidents, criminal prosecution or departmental action against the officials of the Public Works Department (Buildings and Roads) is not liable to be launched.

The next tabulation relates to accidents, persons killed and injured classified according to type of manoeuvre, these have been mentioned as under the heads; 'diverging', 'merging', 'crossing', 'stationary' and 'temporarily held up'.

The last tabulation to which a reference has been made by the learned counsel for the petitioner relates to accidents, persons killed and injured classified according to road condition. The above shows that in Haryana, 8419 accidents occurred due to good surface roads and 758 due to lose surface roads; besides, 25 due to rutted/potholes, 62 in respect of road under repair/construction and 23 due to corrugated/wavy road. The number of accidents on good surface roads is more than those on lose surface roads, rutted/potholes, road under repair/construction and corrugated/wavy road. To somewhat similar effect is the position in Punjab. Therefore, it would be quite improper to say or suggest that merely because the road is not in a proper condition would *per se* result in an accident for which an official of the Public

Works Department (Buildings and Roads) would be liable and that too for criminal prosecution or departmental action.

This Court in exercise of its supervisory writ jurisdiction is not to conduct an enquiry in respect of the criminal offences stated to have been committed for that if the domain of the police whose power of investigation in this regard are unfettered.

In **State of Haryana v. Bhajan Lal**, AIR 1992 SC 604 the Hon'ble Supreme Court held that investigation of a cognizable offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the powers to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code of Criminal Procedure ('CrPC' – for short) and the Courts are not justified in obliterating the track of investigation when investigating agencies are well within their legal bounds as was mentioned therein. It was observed that a noticeable feature in the CrPC was that a Magistrate was kept in the picture at all stages of police investigation but he was not authorized to interfere with the actual investigation or to direct the police how that investigation was to be conducted. But if a police officer transgressed the circumscribed limits and improperly and illegally exercised his investigatory powers in breach of any statutory provisions causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance, was to consider the nature and extent of the breach and pass appropriate

orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity was a dear value of the Constitution.

It is indeed an accepted position that the High Court is normally not to launch any prosecution. The position has been delineated by the Supreme Court in the case of **Sakiri Vasu v. State of U.P. and others**, 2008 (1) RCR (CrI.) 392 wherein a caution was laid down so as to discourage the High Court to entertain writ petitions or petitions under Section 482 CrPC where alternative remedies for registration of a criminal case/FIR were there. It was held that if a person has a grievance that the Police Station was not registering his FIR under Section 154 CrPC, he then could approach the Superintendent of Police under Section 154 (3) CrPC by an application in writing. Even if that did not yield any satisfactory result in the sense that the FIR was still not registered or that even after registering it, no proper investigation was held, it was open to the aggrieved person to file an application under Section 156 (3) CrPC before the learned Magistrate concerned. If such an application under Section 156 (3) CrPC was filed before the Magistrate, the Magistrate could direct the FIR to be registered and also direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate could also under the same provision monitor the investigation to ensure a proper investigation. It was also observed that it was often found that someone had a grievance

that his FIR had not been registered at the Police Station and/or a proper investigation was not being done by the Police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. It was held that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matter and relegate the petitioner to his alternate remedy, first under Section 154 (3) CrPC and Section 36 CrPC before the Police Officers concerned, and if that is of no avail, then he could approach the Magistrate concerned under Section 156 (3) CrPC. Besides, the complainant also had a remedy of filing a private complaint under Section 200 CrPC.

In **Aleque Padamse v. Union of India**, (2007) 6 SCC 171, it was held by Hon'ble the Supreme Court that there was no dispute on the score that whenever any information is received by the Police about the alleged commission of offence which is a cognizable one, there was a duty to register a FIR. The question that was considered was whether a writ could be issued to the Police authorities to register the same. The basic question, it was observed, was as to what course was to be adopted if the police did not do so. The correct position in law after referring to several earlier judgments, it was held, was that the Police officials ought to register an FIR whenever facts brought to their notice show that a cognizable offence had been made out. In case the police officials failed to do so, the modalities to be adopted it was held were set out in Section 190 read with Section 200 CrPC.

Therefore, a writ petition for registering an FIR relating to commission of cognizable offences is not to be normally entertained. Information regarding commission of cognizable offences is to be given to the Station House Officer of the concerned Police Station who is to register an FIR in terms of Section 154 CrPC and proceed to investigate the same or get it investigated. The High Court in case it orders registration of FIRs as a normal course, the same may result in oppression and cause harm to an accused as after registration of FIR the High Court being unable to interfere with the investigation may not be in a position to control it in case the allegations on the basis of which FIR was registered are found to be incorrect or false.

Keeping in view the aforesaid position, the prayer of the petitioner for prosecuting the officials of the Public Works Department (Buildings and Roads) of the States of Haryana, Punjab and NHAI and for initiating departmental action against them and that too in the absence of any material relating to the officials involved or where the road or bridge had been improperly constructed and which had resulted in an accident or accidents, would be absolutely improper and uncalled for. The petitioner in case it has any material with it can bring the same to the notice of the concerned Police Station for initiating action against the culprits, however, it would be improper for the High Court to conduct a roving and a fishing enquiry as to which are the bridges which have been constructed in violation of the departmental

guidelines and who are the officials concerned who are stated to have committed cognizable offences warranting their prosecution.

The other prayer, which has been pressed by way of amendment, is for creating a system/mechanism for fixing the accountability of the officials concerned of the Public Works Department (Buildings and Roads) and that too by issuing a mandamus.

In **Union of India v. C. Krishna Reddy**, (2003) 12 SCC 627, Hon'ble the Supreme Court held that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of the writ is to compel performance of public duty prescribed by a statute and to keep Subordinate Tribunal and officer exercising public functions within the limit of their jurisdiction. Therefore, in order that a mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

In the present case, however, no statutory provision has been shown on the basis of which a mandamus may be issued. Besides, a system/mechanism is sought for being framed which would in fact be in the domain of the legislature and not the Court. It is not for the Court to ask or issue directions for legislation or bring about legislation so that a system/mechanism

is created for fixing accountability of the officials concerned of the Public Works Department (Buildings and Roads).

In State of Himachal Pradesh v. A Parent of A Student of Medical College, Shimla and others, AIR 1985 SC 910, a letter written by a guardian of a student of Medical College at Shimla was treated as a petition and notices were issued by the High Court to the Government and the college authorities. The High Court passed various directions to constitute a committee for reporting the matter relating to ragging. On the submission of the report, which contained a recommendation for legislation, the High Court directed the Chief Secretary to inform the Court as to what action the government proposed to take on the recommendation to initiate legislation for curbing ragging. This direction was given in spite of the Chief Secretary's categorical assurance in this regard. The Supreme Court held that the direction given by a Division Bench of the High Court was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curb the evil of ragging, for otherwise it was found difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the government would introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. This, the Division Bench, it was held, was clearly not entitled to do. It was further held that it is entirely a matter for the executive branch of the Government to decide whether or not to introduce any

particular legislation. Of course, any member of the legislature can also introduce legislation but the Court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the Court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution. If the executive is not carrying out any duty laid upon it by the Constitution or the law, the Court can certainly require the executive to carry out such duty and this is precisely what the Court does when it entertains public interest litigation. When the Court passes any orders in public interest litigation, the Court does so not with a view to mocking at legislative or executive authority or in a spirit of confrontation but with a view to enforcing the Constitution and the law. It was also observed that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.

In **V.K. Naswa v. Union of India**, (2012) 2 SCC 542, the Supreme Court held that the Court can neither legislate nor issue a direction to the legislature to enact the law in a particular manner. The Court has a very limited role and in exercise of that, it is not open to have judicial legislation. In exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its

constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. Besides, in **Municipal Committee, Patiala v. Model Town Residents Assn.**, (2007) 8 SCC 669, the Supreme Court held that it is well settled that the legislature is supreme in its own sphere under the Constitution subject to the limitations provided for in the Constitution itself. It is for the legislature to decide as to when and in what respect and on what subject matter the laws are to be made. It is for the legislature to decide as to the nature of operation of the statutes. The Court cannot usurp the functions assigned to the legislative body under the Constitution and even indirectly require the legislature to exercise its power of law-making in a particular manner. The Court cannot assume to itself a supervisory role for the law-making power of the legislature under the provisions of the Constitution. The High Court must ensure that while exercising its jurisdiction which is supervisory in nature it should not overstep the well-recognized bounds of its own jurisdiction.

Therefore, it is evident that the Court is not to issue directions to the legislature to initiate legislation and it is the domain of the legislature to frame laws. In the circumstances, we are not inclined to issue a writ for legislation in the manner as prayed for.

The petition as has been filed though seems to address a noble cause but the prayers made in the petition are quite ambiguous and unclear. The averments have been made by giving

and submitting pictures of accidents that have occurred and newspapers reports appearing in the press in this regard; besides, a mention has been made to the reports of the Government of India that have been compiled relating to accidents. On the basis of the same, action is sought to be initiated against unidentifiable officials of the Public Works Department (Buildings and Roads) of the States of Haryana, Punjab and NHAI. This in fact is quite misconceived and in the absence of necessary material, this Court is not to conduct such an exercise. In case the petitioner wishes to take action for the improvement of road infrastructure and for construction of roads and bridges according to norms, besides, maintaining them in good running condition, he may file a proper petition in this regard by providing necessary data and material; besides, specifically show as to what are the infractions that have been committed, but a casual petition for initiating a roving enquiry is clearly not maintainable.

The manner, in which the petition has been filed, in case it is entertained, would be quite directionless and it would simply be adjourned from time to time to get various kinds of status reports. This Court is, therefore, of the view that the petition if it is to be entertained as it has been filed would be quite meaningless with no fruitful results being achieved. In fact, if specific material is brought on record as to where a particular bridge or road has been improperly constructed in violation of fixed norms and accidents could occur there, certain remedial measures could be made. However, passing an omnibus order for

all roads and bridges to be properly maintained and in absence thereof, criminal prosecution or departmental action would be liable to be initiated against the defaulting officials of the Public Works Department (Buildings and Roads), would be quite improper. In case, some directions for proper maintenance and upkeep of roads; besides, their constructions are to be issued, these ought to be concrete, specific and enforceable so that the genuine issues are adjudicated and the problem solved by taking remedial measures. This would result in overcoming the malaise of the road accidents and the problems of the conditions of roads and bridges. The petitioner - Society itself has received a sum of Rs.5,25,000/- from the State Government for Creation of Online Road Safety Database Management System (RSDMS) for Punjab State. A contract has been signed between the Punjab Roads and Bridges Development Board and the petitioner - Society on 17.10.2008. A photo-stat copy of the contract has been appended with the petition which, however, is very dim and illegible.

In the circumstances, we are disinclined to entertain the petition and leave it for the petitioner – Society if it so desires to file a proper petition by submitting material and clearly mentioning and indicating the improper construction of roads and bridges and giving information of the officials concerned who may be liable. During the course of hearing, learned counsel for the petitioner also somewhat felt that some more specific material may be required for issuing appropriate directions for upkeep of the roads and bridges so as to avoid accidents. Therefore, we give

liberty to the petitioner to file a fresh petition by giving complete and specific material and pointing out specifically where improper construction of roads and bridges had been raised and would require proper remedial measure for avoiding accidents.

Accordingly, the writ petition is dismissed with liberty to the petitioner to file a fresh petition, if so advised.

(S.S. SARON)
JUDGE

10.08.2016
Sheetal

(LISA GILL)
JUDGE

Note:

- | | |
|----------------------------------|-------|
| 1. Whether speaking/non-speaking | : Yes |
| 2. Whether reportable | : Yes |