

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.838 OF 2019

[(Suo Motu) Courts on its own motion .vs. The Commissioner of Police, Nagpur and another]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.J. Mirza, Advocate as Amicus Curiae for the petitioner,
Shri B.M. Lonare, APP for the respondent no.1-State,
Shri S.K. Mishra, Senior Advocate with Shri S.M. Puranik,
Advocate for the respondent no.2,
Shri M. Anilkumar, Advocate for intervenor,
Shri R.P. Joshi, Advocate for intervenor,
Shri Mrinall Shashishekhar Chakravorty in person.

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CORAM : SUNIL B. SHUKRE AND
MADHAV J. JAMDAR, JJ.

DATED : 26th FEBRUARY, 2020.

Today, learned Amicus Curiae has filed on record a pursis along with the copies of newspapers reports showing that human life continues to pay the price of bad road conditions in city of Nagpur. These newspaper reports, in our considered opinion, do raise serious issues and they need to be examined by the court appropriately in the light of the order passed by this court dated 16.10.2019 and also the observations that we are going to make in the paragraphs that would follow now.

This *suo motu* criminal writ petition started as an effort to see the officials of the Nagpur Municipal Corporation and other connected departments the reason and act diligently in discharging their duties and

responsibilities under the Municipal Laws. Emphasis was placed upon the provisions contained in Section 63 (18) and (19) of the Maharashtra Municipal Corporations Act, 1949 which casts a duty upon the Municipal Corporation to make reasonable and adequate provisions for maintenance of the roads, bridges and sub-ways etc. Accordingly, it was noticed by this court that due to neglect of such responsibility and failure to fasten the accountability, accidents were taking place leading to loss of human life and property. So, it was seen that any failure to perform the duty or mandate under the law had an element of criminal liability and, therefore, this court *suo motu* directed registration of this criminal writ petition in order to examine the issue from the view point of fastening of criminal liability under the provisions of the Indian Penal Code. So various directions were given from time to time and many of those directions were also complied with by the authorities. Some criminal prosecutions were launched against those found to be *prima facie* liable for causing serious injuries, deaths due to their negligence of maintaining the roads. These prosecutions are going on.

Thus, in a way, the purpose of this petition has been largely achieved, but the question is, whether any prosecution of a responsible officer, officials' or contractors would by itself put an end to the malaise that has been the root cause of the loss of human life and property and in our considered view, the answer would have to be an emphatic no. Such malaise would come to

an end only when the officials and the officers learn to respect law and learn to discharge their duties and responsibilities diligently and in compliance with the various provisions of law. So, proper monitoring of the whole process is required. It is also necessary that the authorities and their officers ensure in the first place that no untoward incident or any accident leading to loss of human life and property does occur and it is only as a secondary purpose that it has to be seen that just in case any such untoward incident takes place, the officer concerned is held liable in criminal law. The primary purpose of such a petition is preventive rather than postmortem examination like, for taking penal action in case accidents take place due to potholes.

On 7.1.2020, this court had noted with much pain that inspite of various directions given by this court from time to time, accidents had become regular feature for various reasons and even occasional rains lead to chaotic situation on the roads resulting in not only traffic jams but also accidents. In some cases, sustaining of injuries by pedestrians and users of various injuries has also taken place. Therefore, this court directed the concerned authorities to take detailed survey of the road condition prevailing in the city of Nagpur and submit the report to this court with a view to give all necessary further directions in the matter. That report is now placed on record.

In view of above, we find that now this petition is ripe for being turned into a Criminal Public

Interest Litigation and accordingly, we direct the Registrar (Judicial) to convert the petition into Criminal Public Interest Litigation, so that more effective orders not only preventive but also deterrent could be passed by this court.

Accordingly, we direct the Registrar (Judicial) to register this Criminal Writ Petition as Criminal Public Interest Litigation and, thereafter, to place it before appropriate bench.

JUDGE

JUDGE

Gulande