

HIGH COURT OF DELHI AT NEW DELHI

**WP (Crl.) No. 1858 of 2006**

**Date of Decision:- March 26 , 2008**

|              |     |                                             |
|--------------|-----|---------------------------------------------|
| GOVIND KUMAR | ... | Petitioner                                  |
| Through:     |     | Petitioner in person.                       |
| Versus       |     |                                             |
| STATE        | ... | Respondent                                  |
| Through:     |     | Ms.Mukta Gupta, Standing Counsel for State. |

CORAM:

**HON'BLE MR. JUSTICE S.L. BHAYANA**

- |    |                                                                      |     |
|----|----------------------------------------------------------------------|-----|
| 1. | Whether reporters of local paper may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not?                               | Yes |
| 3. | Whether the judgment should be referred in the Digest?               | Yes |

**S. L. BHAYANA, J.**

Writ Petition (Criminal) No.1858/2006 has been filed with the prayer for setting aside the order dated 15.08.2006 passed by Sh.Rakesh Kumar, learned Metropolitan Magistrate, Rohini Courts, Delhi. The Petitioner has further prayed that a direction be issued to the Superintendent, Tihar Jail for referring him to an appropriate hospital for

medical check-up with regard to the injuries sustained by him.

2. The case set out in the writ petition is that Smt.Veena, on whose behest FIR No.1161/2006 was lodged at P.S. Sultan Puri, owed the Petitioner a certain sum of money. The Petitioner has alleged that since Smt.Veena was on friendly terms with the SHO, PS-Sultan Puri, he and Smt.Veena connived and concocted a false and fictitious case against the Petitioner and registered an FIR under Sections 354/452/506 of the Indian Penal Code, 1860. Thereafter, on 14.08.2006, the petitioner was arrested and was very badly beaten up by the Police at PS-Sultan Puri.

3. The Petitioner filed a bail application, as well as an application under Section 54 Cr.PC for constituting a medical board for conducting medical examination of the petitioner.

4. Learned Metropolitan Magistrate dismissed the Petitioner's bail application as well as the application under Section 54 Cr.PC. For the benefit of the judgment, the order passed by Sh.Rakesh Kumar, MM, Rohini Courts, Delhi is reproduced hereinbelow:

“FIR NO. 1161/06 PS SULTAN PURI

U/S 354/452/506 IPC

15/08/06

Present: Ld APP for State.

: Accused produced from P.C, alongwith IO HC Devender Singh.

Today bail application has been moved which is strongly opposed by Ld. APP for State, Taking into consideration, facts and circumstances as well as nature of the offence which he has committed no ground made out. Hence, dismissed. Accused be remanded in J.C. till 29.08.06.

Immediately after the dismissal of the bail application, Counsel for applicant/accused moved another application seeking medical examination of the accused u/s 54 Cr. P.C. which is strongly opposed by Ld. APP for State that since he has been produced after the medical examination. No ground made out. Hence, application dismissed Copy of this order to be given dasti.

Accused be remanded in J.C. till 29.08.06.”

5. The State has filed its status report in this case. The facts of the case as set out in the status report are as follows.

6. On 24.07.2006, information was received that a quarrel had taken place at A-619, Gram Sabha, Pooth Kalan, Delhi. Smt Veena's statement was recorded to the effect that the Petitioner had engaged her for cooking his food for a sum of Rs.1500 per month. During this period, when Smt.Veena cooked meals for the Petitioner, the Petitioner had attempted to molest her on several occasions because of which she had shifted out of that locality. He followed Smt.Veena to her

present address and while she was alone at home, the Petitioner forcibly caught her and tried to outrage her modesty. On the basis of statement of Smt.Veena, a case under Section 354/452/306 IPC was registered at P.S. Sultan Puri vide FIR No.1161/2006 on 24.07.06. An investigation was conducted and the Petitioner was arrested on 14.08.2006.

7. The Petitioner has argued that the learned MM has failed to follow the guidelines laid down by the Supreme Court in Sheela Barsala vs. State of Maharashtra, **AIR 1983 SC 378**, wherein it was laid down that it is the duty of the Magistrate to inform the accused of their right to medical examination, if he has complained of torture and maltreatment. He argued that the learned MM has dismissed his application under Section 54 Cr.PC without assigning any reason for the same.

8. I have heard learned counsel for the accused as well as the State and have carefully gone through the petition and the status report filed by the State.

9. From a careful reading of the petition, without going into the merits of the present case, it is to be noted that though the power of the High Court under Article 226 is very

wide, however, the High Court should not entertain a writ petition in cases where an alternative remedy is available. In my opinion, therefore, the writ petition is not maintainable in view of the fact that alternative and efficacious remedy by way of appeal in respect of the rejection of the bail application was available to the Petitioner.

10. The second prayer of the Petitioner for directing the Superintendent, Tihar Jail to refer the Petitioner to an appropriate hospital, in order to conduct medical examination on his person regarding the injuries has become infructuous as medical examination report dated 15.08.06 of the Petitioner has been submitted before this Court. Hence, the guidelines laid down by the Supreme Court in *Sheela Barsala's case (supra)* have been duly complied with by the State.

11. In view of the aforesaid discussion, the writ petition is not maintainable and the same is, therefore, dismissed.

S. L. BHAYANA, J.

March 26 , 2008

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