

## Dalip Kumar and Another Vs Smt. Vimla and Another

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 28, 2012

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 7 Rule 11, 80  
Constitution of India, 1950 â€” Article 227  
Criminal Procedure Code, 1973 (CrPC) â€” Section 173

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Advocate:** S.C. Thatai, for the Appellant; C.S. Rana, Advocate, for the Respondent

**Final Decision:** Allowed

### Judgement

L.N. Mittal, J.

Aggrieved by order dated 04.04.2011 (Annexure P-5) passed by the trial court, defendants No. 1 and 2 have filed this

revision petition under Article 227 of the Constitution of India to assail the said order. Vide said order, trial court has dismissed application

(Annexure P-3) moved by defendants No. 1 and 2 under Order 7 Rule 11 of the CPC (in short, "CPC") for rejection of plaint (Annexure P-2)

instituted by respondent No. 1 plaintiff Vimla against petitioners as defendants No. 1 and 2 and against proforma respondent No. 2 as defendant

No. 3.

2. Respondent No. 1 has pleaded that she along with others was prosecuted in FIR No. 293 dated 22.12.1994 for various offences but was

acquitted by learned Judicial Magistrate vide judgment dated 09.11.2000 (Annexure P-1). The said FIR lodged by defendant No. 1 Dalip Kumar

constable. The case was investigated by ASI Ram Kishan defendant No. 2 as investigating officer and final report (challan) u/s 173 of the Code of

Criminal Procedure was signed and forwarded by defendant No. 3. The plaintiff in the suit has claimed compensation for her malicious prosecution

in the said case.

3. Defendants No. 1 and 2 in their application (Annexure P-3) alleged that the plaint is liable to rejection for want of notice u/s 80 CPC.

4. Plaintiff by filing reply (Annexure P-4) resisted the application and pleaded that defendants No. 1 and 2 have been sued in their individual

capacity and therefore, notice u/s 80 CPC was not required to be served on them.

5. Learned trial court vide impugned order (Annexure P-5) has dismissed the application (Annexure P-3) moved by defendants No. 1 and 2 who

have, therefore, filed this revision petition to challenge the said order.

6. I have heard counsel for the parties and perused the case file.

7. In so far as defendant No. 1 is concerned, he was complainant in the FIR and it was held in judgment (Annexure P-1) that he was not proved to

be public servant or on public duty at the time of alleged occurrence. Consequently, defendant No. 1 has been sued in individual capacity as being

complainant of the FIR and not in his official capacity as constable. Consequently notice u/s 80 CPC was not required to be served on defendant

No. 1. Instant revision petition qua petitioner No. 1/defendant No. 1, therefore, merits rejection.

8. However, as regards petitioner No. 2/defendant No. 2, it has been mentioned in plaint (Annexure P-2) itself that he was investigating officer in

the aforesaid FIR. Consequently, defendant No. 2 was acting in his official capacity as public servant. In view thereof, even as per averments in

plaint (Annexure P-2), it was mandatory for the plaintiff to have served notice u/s 80 CPC on defendant No. 2 before filing the suit. However,

admittedly no such notice was served on defendant No. 2 before filing the suit. Consequently, the suit is barred by law i.e. for want of notice u/s 80

CPC. Section 80 CPC stipulates that no suit shall be instituted against a public officer in respect of any act purporting to be done by such public

officer in his official capacity until the expiry of two months after service of notice on him. In the instant case, even as per plaint averments,

defendant No. 2 was acting as public servant in his official capacity as investigating officer of the aforesaid FIR. Consequently, the suit against

defendant No. 2 is barred for want of notice u/s 80 CPC. The plaint is, therefore, liable to be rejected against defendant No. 2 under Order 7

Rule 11 CPC. Impugned order of the trial court in this regard suffers from perversity, illegality and jurisdictional error so as to call for interference

by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. For the reasons aforesaid, instant revision

petition on behalf of petitioner No. 1 is dismissed whereas the revision petition on behalf of petitioner No. 2 is allowed. Impugned order (Annexure

P-5) passed by the trial court qua petitioner No. 2 is set aside and application (Annexure P-3) is allowed on behalf of petitioner No. 2/defendant

No. 2 only and plaint (Annexure P-2) stands rejected under Order 7 Rule 11 CPC as against defendant No. 2 only.