

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC  
&  
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 23RD DAY OF JUNE 2017/2ND ASHADHA, 1939

WP(C) .No. 17383 of 2017 (W)  
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PETITIONER/PETITIONER:  
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ALEX V. CHACKO,  
AGED 55 YEARS, S/O.LATE M.M.CHACKO,  
VELLAAPPALLLIMATTATHIL HOUSE, PEROOR.P.O,  
KOTTAYAM DISTRICT.

BY ADVS.SRI.C.C.THOMAS (SR.)  
SRI.NIREESH MATHEW  
SRI.M.G.KARTHIKEYAN

RESPONDENTS/RESPONDENTS:  
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1. THE DIRECTOR GENERAL OF POLICE (LAW & ORDER)  
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-695001.
2. THE EXCISE COMMISSIONER,  
COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM-695033.
3. THE DISTRICT SUPERINTENDENT OF POLICE,  
KOTTAYAM-686001.
4. THE DEPUTY COMMISSIONER OF EXCISE,  
COLLECTORATE.P.O, KOTTAYAM-686002.
5. THE CIRCLE INSPECTOR OF EXCISE,  
KOTTAYAM-686001.
6. THE CIRCLE INSPECTOR OF POLICE,  
ETTUMANOOR, KOTTAYAM DISTRICT-686631.
7. THE SECRETARY,  
TAXES (A) DEPARTMENT, GOVT.SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
8. STATE OF KERALA,  
REPRESENTED BY SECRETARY, HOME  
AFFAIRS, GOVT.SECRETARIAT, THIRUVANANTHAPURAM-695001.

R4 BY SR.GOVERNMENT PLEADER P.P.THAJUDEEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
23-06-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 17383 of 2017 (W)  
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APPENDIX

PETITIONER'S EXHIBITS  
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EXHIBIT P1       PHOTOCOPY OF THE CIRCULAR NO.A1-16579/98 DATED 31.8.1998  
ISSUED BY THE EXCISE COMMISSIONER.

RESPONDENT'S EXHIBITS       NIL  
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TRUE COPY

CSS/

P.S.TO JUDGE

**C.R.**

Antony Dominic & Dama Seshadri Naidu, JJ.

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WPC No.17383 of 2017  
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Dated this the 23<sup>rd</sup> day of June 2017

**JUDGMENT**

Dama Seshadri Naidu, J

**Introduction:**

Athidhi Devobhava<sup>1</sup>: In a wintry evening a friend of yours drops in; you both while away time on pleasantries. A guest as he is, you offer him a glass of wine. You are breaking law, for you are selling liquor. Startling as it may seem, that is what the law says, at least, as the Government maintains. Perhaps, the law has been reduced—interpreted—to its barebones: *reductio ad absurdum*.

**Facts:**

2. Petitioner Alex V. Chacko, a resident of Peroor, wants to

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<sup>1</sup> Taittiriya Upanishad, Shikshavalli I.20: Matrudevo bhava, pitrudevo bhava, acharyadevo bhava, athithdevo bhava. It literally means “be one for whom the Mother is God, be one for whom the Father is God, be one for whom the Teacher is God, be one for whom the guest is God.” Source : Wikipedia, accessed on 23.06.2017.

conduct the baptism ceremony for his grandson on 25.6.2017. After the ceremony, he wants to treat his guests—about 300 friends and relatives—to dinner. Alex wants to serve liquor in the dinner, in keeping with what he calls the custom followed in his community.

3. In January 2015, he celebrated his eldest daughter's betrothal and the "Mylanji ideel." On that occasion, when he had intended to serve liquor, the excise officials directed him to take a permit for serving liquor. Given the paucity of time, Alex did not contest the officials' directive; instead, he complied with it: he took two permits—FL-6 licences—for 2 days, said to be as per rule 13 (6) of the Foreign Liquor Rules.

4. Chastened by his experience in 2015, this time, too, Alex approached the excise officials who reiterated what they had said in 2015. Alex's failing to get the licence, the officials are alleged to have threatened him with searching his house and registering cases

against him. To ward off that threat and to have the function conducted honouring the ‘tradition’ of his community, Alex has filed this writ petition, calling the official’s insistence on his getting licence—police harassment.

**Submission:**

**Petitioner’s:**

5. Sri C. C. Thomas, the learned Senior Counsel for Alex, has submitted that as per the G.O dated 14.12.2012, a person may possess a particular quantity of liquor. So all adult members of a family together possessing Foreign Made Foreign Liquor (FMFL) to the extent permitted in the GO cannot be an offence.

6. In elaboration, Sri Thomas has submitted that Alex may possess 2.5 litres of FMFL as per the G.O referred to above and the Ext.P1 clarificatory circular issued by the Excise Commissioner. Alex’s family has six adult members, all of whom can possess 15 litres of FMFL. All of them, according to the learned Senior

Counsel, visited foreign countries on different occasions and brought along with them the permitted quantities of FMFL: 12 litres.

7. Sri Thomas has also contended that the proposed serving of liquor during the dinner on 25.06.2017 in Alex's residence will not amount to consumption of liquor in public place to attract Section 15(C) of Abkari Act. For Alex's house is not a public place. In the end, the learned Senior Counsel has contended that the officials' insistence that Alex can serve liquor to his guests in his house only by taking an FL-6 license under Rule 13(6) of the F.L. Rules emanates from a gross misreading—negating the letter and spirit—of the Rule 13(6) of the Foreign Liquor Rules.

**Government's:**

8. The learned Government Pleader contends that Alex can serve liquor in the dinner neither in his house nor outside given the specific statutory interdiction in that regard. So long as the provisions of the Abkari Act and the Rules under the Act remain

unchallenged, Alex can serve no liquor without obtaining an FL-6 licence.

9. The baptism, a public function, involves Alex's relatives, friends, and neighbours who are part of general public and who include even children and women.

10. Elaborating on FL-6 license, the learned Government Pleader has contended that it is a special license not for sale of liquor but for serving liquor on special occasions. Initially, the Government had limited the FL-6 licence only to serve the needs of professional bodies holding national and international conferences. But from 01.04.2009, the Government lifted the limitation by omitting the proviso through SRO No. 214/2009. Now the licence fee for FL-6 stands at Rs.50,000/-, as modified by SRO No. 257/2013.

11. The learned Government Pleader has also contended that a person can possess three litres of Indian Made Foreign Liquor (IMFL), to be consumed only personally. In other words, the liquor

thus possessed cannot be served to, or shared with, or even given as gift to, any friend or relative. He then elaborated on the various forms of licences that can be obtained under the Foreign Liquor Rules, 1953. Zeroing in on the FL-6 licence, the learned Government Pleader has reiterated that a host needs to obtain it to serve liquor on occasions such as conferences, meeting, marriage functions, family get-togethers, even if they are held in the close confines of houses.

12. The vending of liquor, submits the learned Government Pleader, cannot differ from serving of liquor. If the Government does not insist on the FL-6 licence, people will sell liquor in their houses in the name of serving it to their friends, relatives, and invitees: this will turn every house in the state a bar.

13. Drawing our attention to Section 15(C) of the Abkari Act, the learned Government Pleader has contended that the proposed dinner will qualify as “dining” (eating dinner as social

function/entertaining someone to dinner) as stated in explanation 1 of Section 15(C) of the Act. He further contends that as per Section 3(15) of the Act, Alex's entertaining guests by serving liquor will amount to gifting liquor to them, and it is again prohibited, as it amounts to sale.

14. The *panthal* (tent or awning) proposed to be erected in Alex's compound, argues the learned Government Pleader, amounts to a public place under Section 15(C) of the Act. Summing up, he has asserted that Alex cannot serve liquor to his friends, relatives, and invitees at his dinner even for the baptism function proposed to be conducted on 25.06.2017.

15. Heard Sri C. C. Thomas, the learned Senior Counsel for Alex and the learned Government Pleaders for the respondents, besides perusing the record.

**16. Issues:**

I. Does the petitioner's house and the adjacent *panthal*

qualify to be public places preventing the petitioner from serving liquor as part of a family function?

II. Does the petitioner's serving liquor to his guests in his house, say, on a festive occasion, amount to vending liquor under Section 15 (C) of the Kerala Abkari Act?

**Discussion:**

**Statutory Position:**

17. Manufacture, production, transport, sale, and consumption of liquor are, indeed, controlled and regulated by the Kerala Abkari Act and Rules made there under. The liquor, admittedly, cannot be treated as an article of food. As defined in Section 3(15) of the Act, "sale or selling" covers transfer of liquor. And the "transfer" includes gift of liquor, too. So goes the Government's contention that a host serving liquor to his guests amounts to gifting it, and that gifting amounts to sale under Section 3 (15) of the Act. Section 8 of the Act, as we further see, prohibits

manufacture, import, export, transport, transit, possession, storage, sale of liquor.

18. Section 13 limits the quantity of liquor a person can possess: as per GO(P) No. 17/2012, dated 14.02.2012, the limit is this: Toddy - 1.5 litre; IMFL – 3 litre; Beer – 3.5 litre; Wine – 3.5 litre; FMFL – 2.5 litre; Coco Brandy – 1 litre. Pertinently, the State will charge no fee on *bona fide* private consumption. Section 13A empowers the Government to prohibit a person from possessing liquor.

19. Section 15 prohibits sale of unlicensed liquor. Section 15C of the Act proscribes consumption of liquor in public places: no person shall consume liquor in any public place unless consumption of liquor in any such place is permitted under a license granted by the commissioner. The explanation attached to Section 15C defines “public place”, and the house or the residential place stands conspicuously omitted from the long list of

public places. It pays to reproduce the Explanation I:

“[F]or the purpose of this section, “public place” means any street, court, police station [or other public office or any club] or any place of public amusement or resort or on board any passenger boat or vessel or any [public passenger or goods vehicle], or a *dining or refreshment room in a restaurant, hotel, rest house*, travellers ‘ bungalow or tourists’ bungalow where different individuals or groups of persons consume food, but shall not include any private residential room.”

(emphasis added)

20. Foreign Liquor Rules 1953 have been framed under Sections 10, 24, and 29 of the Act. Rule 7 demands all licencees to maintain accounts and registers as prescribed by the Excise Commissioner. Rule 13 deals with licences for possession, use, or sale.

Of importance is Rule 13(6):

Foreign Liquor 6 Special Licences: These licenses will be granted by the Excise Commission when the circumstances when the circumstance does not allow the issue of licences of any of the above descriptions, on such terms and conditions and for such periods as the Excise Commissioner may determine on each occasion. The special license shall be issued on payment of a fee of [Rs. 50,000 (rupees fifty thousand only)] for each day of the occasion.]

**Issue No.1:****The Government's Apprehension:**

21. First, the respondents contend that Rules inexorably prohibit all sorts of liquor consumption without licence—the dwelling places not excluded. The Rules have not been challenged. They also apprehend that if individuals are permitted to serve liquor to guests unregulated, every house will turn into an unheralded bar. Perhaps, the Government's vigil on the liquor abuse is laudable; its insistence, in that process, to invade privacy of homes is not.

22. As far back as in 1604, Edward Coke, considered to be the greatest judge and jurist of the [Elizabethan](#) and [Jacobean](#) eras, declared that “the house of every one is to him his Castle and Fortress as well for defence against injury and violence, as for his repose.” In other words, a man's home is his castle.

23. Will the people resort to this large-scale abuse of converting their homes into unheralded or undeclared bars, to serve liquor for money, and does this escape the official gaze? While

tracing the origins of the Common Law, Justice Oliver Wendell Holmes Jr., has commented in Lecture I, titled ‘Early Forms of Liability’ in his book *The Common Law* that “vengeance imports a feeling of blame, and an opinion, however distorted by passion, that a wrong has been done. It can hardly go very far beyond the case of a harm intentionally inflicted: *even a dog distinguishes between being stumbled over and being kicked*”. We reckon Holmes J’s aphoristic assertion sums up, rather exposes, the facetious fallout of the Government’s assertion.

24. Going by the Government’s contention, every individual needs to maintain a record whenever he offers a glass of wine to his guest in his house, and it is after his obtaining an FL-6 licence, at that. If one goes by what Robert Evans has stated in his book *A (Brief) History of Vice, How Bad Behavior Built Civilization*, the very culture of people coming together, establishing villages—there by giving rise to societies—has come out of man’s penchant for pint and sharing it. We do not endorse this reasoning, though.

25. Rule 13 (6) purportedly compels a person to get an FL-6 licence. Explanation I attached to Section 15 rings loud and clear. First, a residential place stands exempted—it does not find place. A “dining room” must be read in conjunction with “in a restaurant, hotel, rest house.” Different individuals or groups of persons must be consuming food in those places. It hardly contemplates a house, a dinner on a large scale on a festive occasion including.

26. So, going by the Explanation I appended to Section 15, we have no manner of doubt that Alex’s house, with the adjacent *panthal*, does not qualify to be a public place.

**Issue No.2:**

27. Admittedly there will be no sale in a family function. Nor does the host's serving liquor to guests amount to a gift and, by legal fiction, a sale. Recalling the principle of *reductio ad absurdum*, if we take the Government’s argument to its logical end, then the consequence is this: if you offer a glass of wine costing, say, Rs.100, to your guest one evening, you must apply and obtain

a licence by paying Rs.50,000/- that is what the fee prescribed for obtaining an FL-6 licence.

28. We will address the issue on merits, too. The FL-6 license, the Government contends, is a special license issued not for the purpose of sale of liquor but for serving the same on special occasions. If we comprehensively view Rule 13, it provides for, to exemplify, Hotel (Restaurant) Licence, Club Licence, Airport Transit Lounge Licence. Of course, the licence under sub-rule (6) is a residuary licence: “when the circumstances do not allow the issue of licences of any of the above descriptions.” Inescapably, in all those licences a commercial element is conspicuous.

29. Any provision of law, as the basic interpretative tenets indicate, needs to be read and interpreted holistically. Truncated reading leads to unintended consequences. So we regret our inability to uphold the Government’s contention that sub-rule (6) controls the liquor serving, rather than its selling. As has been

pointed out by Alex's Counsel, there may have been any number of occasions when people or an establishment needs a licence for a limited period: on 1<sup>st</sup> January of a year, for example. The rest of the year a restaurant which is otherwise eligible for liquor licence may not see much business prospect. It is plausible, and in no way certain, to reckon such a situation exemplifying the use of FL-6 Licence.

30. The Government's further concern seems to be that if unlicensed consumption of liquor is permitted, it will create social problems. Perhaps fear is the best deterrent—but not for judicial adjudication. It further maintains that people will sell liquor in their houses in the name of their serving liquor to friends, relatives, and invitees. This will make each and every house a bar in the state. An unpalatable allegation but, at the same time, a legally sustainable one. Leaving aside the ethical aspect of all the people in the State vying with one another to convert their houses—happy homes—

into bars serving liquor on the sly, we may observe that the Government is not remediless.

31. First, we observe that the potential for abuse of a provision of law cannot be an interpretative index to vilify, or even to understand, or even to vilify, that provision of law. If a plain reading of a provision paves way for potential abuse of that provision, the remedy lies elsewhere: Legislative. Court cannot lose its fealty to plain meaning guided by a doomsday dogma.

32. Second, the Government has already imposed strict limitations on the quantity a person can possess. It has also defined what is a public place. If any person violates either of these norms, in the name of serving his guests in his “house,” the Government, we reiterate, is not powerless. It can always act—in accordance with law, however.

### **Conclusion:**

We hold that a private function in the precincts of a person’s house does not fall within the mischief of Rule 13 (6) of the

Foreign Liquor Rules, 1953. But, even to those private family-functions, the other regulations, for example, concerning quantity, and the identity of place will apply.

We therefore allow this writ petition: we declare that the petitioner need not obtain an FL-6 licence to serve liquor to his guests in his house. No order on costs.

**Sd/- Antony Dominic, Judge**

**sd/- Dama Seshadri Naidu, Judge**

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