

(1984) 02 KL CK 0018
In the High Court Of Kerala

K.P. Mohammed

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-02-1984

Acts Referred:

Citation : (1984) CriLJ 745

Hon'ble Judges : K. Bhaskaran, Acting C.J.; P.C. Balakrishna Menon, J

Bench : Division Bench

Judgement

K. Bhaskaran, A.C.J.

1. Both are writ petitions concerning the right to perform cabaret dances in restaurants; though the nature of reliefs sought is different. In O.P. No. 7675 of 1983, filed by one Sri K. P. Mohammed, President of All India Lohia Vichar Manch & Member, Cabaret Virudha Samithi, Calicut, the main prayer is for the issue of a writ of mandamus directing respondents 1 and 2, namely, the State of Kerala and the Corporation of Calicut, to ban the Cabaret dance conducted in various restaurants in the city of Calicut. In O.P. No. 8271 of 1933, filed by M/s. Queens Restaurant (Private) Ltd. Calicut, represented by its Managing Director, the main relief sought is the issue of a writ of mandamus directing the respondents, the Police authorities in the city of Calicut, to forbear from interfering with the petitioner's right to cater to the needs of the adult customers who purchase cabaret coupons for admission to the hall exclusively reserved for them.

2. In these writ petitions, therefore the question would arise as to whether cabaret dances are to be banned totally or they are to be permitted without any restrictions whatsoever. In the event of our finding that some reasonable restrictions are necessary, what could broadly be, such restrictions also has to be indicated,

3. Cabaret by itself is not in any way obnoxious, if understood in the correct sense in which it ought to be understood. In Encyclopaedia Britannica (Micropaedia), 15th Edition, Volume II, at page 20, cabaret is defined:

Cabaret, restaurant that serves liquor and offers musical entertainment and often dancing. The cabaret originated in France in the 1880s as a small club in which the audience was grouped around an entertainment platform. The entertainment at first consisted of a series of amateur acts linked together by a master of ceremonies, its coarse humour was usually directed against the conventions of bourgeois society. Before long the French cabaret eventually came to resemble the English music hall with its emphasis on comic skits. The primary exponent of French cabaret entertainment was the Moulin Rouge, in Paris; established in 1889; as a dance hall, it features a cabaret show in which most major stars of variety and music hall have since appeared. The world of the Moulin Rouge in its heyday was immortalised in the work of Toulouse-Lautrec.

Imported from France c. 1830, the first German Kabarett was established in Berlin by Baron Ernst Von Wolzogen. It retained the intimate atmosphere, entertainment platform, and improvisational character of the French cabaret but developed its own characteristic gallows humour. By the late 1920s, the German cabaret gradually had come to feature mildly risqué musical entertainment for the middle class gentleman as well as biting political and social satire. It was also a centre for underground political and literary movements. Patronized by artists, writers, political revolutionaries and intellectuals, the German cabarets were usually located in old cellars. They were the centres of leftist opposition to the rise of the German Nazi Party and often experienced Nazi retaliation for their criticism of the Government. The composers Paul Hindemith and Hans Eisler, unknown at the time, were active in the cabarets; the playwrights Bertolt Brecht and Kurt Weill collaborated on the highly successful ballad opera *Die Dreigroschenoper* (the Threepenny Opera 1928), that established the form of the topical opera, their reputations, and the cabaret stardom of the singer Lotte Lenya, who was Weill's wife. The cabaret survives in post-World War II Germany as a forum for topical satire, but it, has lost most of its political significance.

The English cabaret has its roots in the tavern concerts given in city taverns during the 18th and 19th centuries. A popular form by the end of the 19th century it is often called a music hall, although music hall usually means variety entertainment in England.

In the United States where it is usually called a nightclub, the cabaret is one of the few remaining places where an entertainer, usually a comedian, singer, or musician, can establish rapport with an audience in an intimate atmosphere that encourages improvisation and freedom of material. Although music for dancing is often provided during the entertainers' intermissions, the primary attraction is the featured entertainer. In the post-World War II period a few performers were successful with sharp political and social satire, but commercial considerations were paramount, and nightclubs relied chiefly on established theatrical personalities who could attract a wide audience.

In *Words and Phrases*, Permanent Edition, Volume VI page 1, Cabaret is defined thus;

"A cabaret" is a restaurant or barroom with dancing and singing as entertainment...Licensed coffee, pastry and sandwich restaurant whereby proprietor sponsored free Sunday afternoon concerts of Chamber music was not a "cabaret" within licensing requirement...A "cabaret" is a cafe or restaurant where patrons are entertained by performers who dance and sing after the practice of certain French taverns". There could possibly be no serious objection to the hotels and restaurants entertaining their customers with music and dance so long as it does not become an obscene performance or a performance in nudity. In fact, "decency" and "morality" themselves are terms of wide and variable contents. Generally speaking, "decency" connotes conformity to standards of good taste and morality. On a sensitive issue like this the Court would not make a dogmatic approach, as the concept of "decency" and "morality" are not static, and are bound to change from place to place, from time to time, from people to people, and from age to age. The Court's concern and anxiety should only be to prevent the exhibition at public places of performances which are immodest and indecent judged by the standards of our country and of our times.

4. The counsel for the petitioner in O.P. No. 8271 of 1983 who is the 4th respondent in O.P. No. 7675 of 1983, submitted that it is not his intention to have any performance of nudity or a performance of obscenity in his restaurant. The counsel for the 6th respondent, in O. P. No. 7675 of 1983-R. viz., he Cabaret Artistes" Association, Calicut, also submitted that the member of the Association had no intention to give any performance which could be characterised as one of nudity or obscenity. These submissions are recorded,

5. This Court, expects that the 4th and 6th respondents would stick to the undertaking, and would refrain from staging or causing to stage any performance which would be objectionable being obscene or vulgar tending to corrupt the minds of the young men. Respondents 1 to 3 in O. P. No. 7675 of 1983 would ensure that respondents 4 and 6 do not transcend the limits of decency and morality judged by the Indian standards and traditions, and of our times, and keep a constant watch to see that there is no violation of the undertaking given by respondents 4 and 6. Though the 5th respondent in O.P. No. 7675 of 1983, viz., the proprietor of Eskimo Restaurant, Calicut, is not seen to have entered appearance, what is said of respondents 4 and 6 would be equally applicable to the 5th respondent also.

6. We make it clear that the performance of cabaret dance devoid of nudity and obscenity, judged according to the standards indicated in the preceding paragraphs, is permissible, and is not in any way liable to be banned or prevented.

The writ petitions are dismissed; however, subject to the above directions and observations. There will be no order as to costs.

Issue carbon copy of this judgment to the counsel for the petitioner in O.P. No.

8271 of 1983, the counsel for the respondents 2 and 6 in O. P. No. 7675 of 1983 and to the counsel for the petitioner in O.P. No. 7675 of 1983, on usual terms, if applied for in that behalf. A copy of this judgment may be given to the Government Pleader free of costs. Communicate a copy of this judgment to the Commissioner of Police, Calicut City (the 3rd respondent in O.P. No. 7675 of 1983) for information and compliance.