

**T.K. Aboobacker Vs. the State of Kerala, Represented by the Public Prosecutor High Court of Kerala, Ernakulam and Another**

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**Court :** Kerala

**Decided On :** Mar-13-2012

**Judge :** P.S. Gopinathan

**Appeal No. :** Crl.MC.No. 772 of 2012

**Appellant :** T.K. Aboobacker

**Respondent :** The State of Kerala, Represented by the Public Prosecutor High Court of Kerala, Ernakulam and Another

**Judgement :**

P.S. GOPINATHAN, J.

1. In this petition under Section 482 of the Code of Criminal Procedure, petitioner, who is the second accused in C.C. 562 of 1995 on the file of the Judicial Magistrate of the First Class - II, Hosdurg, seeks an order to quash all further proceedings against him. The offence alleged is under Section 420 IPC. The plea is that the matter has been settled between the first accused and the complainant and accordingly, the first accused was acquitted under Section 320(8) of the Code of Criminal Procedure as evidenced by Annexure A3 order. The fact that the complainant and the first accused compounded the matter would not enable the second accused to have an order of acquittal under Section 320 (8) of the Code of

Criminal Procedure. Neither is he entitled to get an order to quash further proceedings under Section 482 Cr.P.C. In the event the matter is settled between the petitioner and the complainant, the offence being a compoundable one, though with the permission of the court, petitioner is at liberty to file a petition under Section 320 (2) of the Code of Criminal Procedure before the trial court.

2. Learned counsel for the petitioner would further submit that the offence is mainly alleged against the first accused and since the case between the complainant and the first accused is compounded, petitioner is also entitled to an order of acquittal. Having gone through Annexure A1 complaint, I am not inclined to accept the contention because involvement of the petitioner is specifically pleaded in the complaint. However, it is for the petitioner to seek for compounding under Section 320 (2) Cr.P.C. or to seek discharge under Section 245 (1) or (ii) Cr.P.C. The learned counsel for the petitioner also sought for permission to argue for discharge in absence. That is a matter to be considered by the trial court on appropriate proceedings.

In the result, this petition is dismissed without prejudice to the defence of the petitioner.

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