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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 7TH DAY OF OCTOBER 2025 / 15TH ASWINA, 1947

CRL.MC NO. 7306 OF 2025

CRIME NO.446/2025 OF CHERPULASSERY POLICE STATION, PALAKKAD

PETITIONER:

1 USMAN KUNJU
AGED 60 YEARS
S/O ABDU, NOOFINA MANZIL, THULAMPARAMBU SOUTH, HARIPAD, ALAPPUZHA DISTRICT,, PIN - 690514

2 RAHIYANATH
AGED 49 YEARS
W/O USMAN KUNJU, NOOFINA MANZIL, THULAMPARAMBU SOUTH, HARIPAD, ALAPPUZHA DISTRICT., PIN - 690514

BY ADVS.
SHRI.MOHANAN M.K.
SHRI.STEEWAUGH SHAJI CHERIAN

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,, PIN - 682031

2 THE STATION HOUSE OFFICER
CHERPULASSERRYPOLICE STATION, PALAKKAD DISTRICT., PIN - 679503

OTHER PRESENT:

SRI. VIPIN NARAYANAN, PP.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07.10.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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O R D E R

Dated this the 07th day of October, 2025

The first petitioner is the owner of Honda Scooter bearing Registration No.KL-29-S-4412. The scooter was purchased and registered in the 1st petitioner's name on 25.11.2020, evidenced by Annexure A certificate of registration. The 2nd petitioner is the 1st petitioner's wife. The petitioners are aggrieved by Annexure-C notice of the Inspector, Cherupulassery Police Station, proposing to confiscate the 1st petitioner's scooter by exercising the power under Section 68F of the NDPS Act. The notice is issued on the premise that the scooter was purchased by utilizing the proceeds of the narcotic deals of the petitioners' son, who is an accused in Crime No.446/2025 registered at the Cherupulassery Police Station for offences punishable under Sections 20(b)(ii)C, 25 and 29 of the NDPS Act.

2. The learned Counsel for the petitioners submitted that the accused boy son was aged only 19 years as on the date of registration of Crime No.446/2025 and 14 years in 2020, when the scooter was purchased. As such, the scooter

cannot be proceeded against on the premise that it is illegally acquired property.

3. The learned Public Prosecutor referred to Section 68F of the NDPS Act to point out that the power vested with the officer conducting investigation can be exercised if he has reason to believe that any property in relation to which an enquiry or investigation is being conducted is an illegally acquired property.

4. In the light of the contention raised, it is essential to carefully scrutinize Sections 68E and 68F of the NDPS Act, which are extracted below for easy reference;

> **"68-E. Identifying illegally acquired property**.— (1) Every officer empowered under Section 53 and every officer-in-charge of a police station shall, on receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.
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> (2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institution or any other relevant matters.
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> (3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions of guidelines as the competent authority may make or issue in this behalf.

> **68-F. Seizure or freezing of illegally acquired property-** (1)Where any officer conducting an inquiry or investigation under Section 68-E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:
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> Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made."

5. Going by the above provisions, before initiating action for seizure or freezing a property, the officer concerned should first be satisfied about the information received regarding the holding of illegally acquired property by the person to whom Chapter VA (forfeiture of illegally acquired property) applies. On reaching such satisfaction, the officer should proceed to take all steps necessary for tracing and identifying the property, after recording the reasons for doing so. The steps for tracing and identifying

the illegally acquired property includes inquiry, investigation or survey in respect of any person, place, property, assets, documents etc. Such inquiry, investigation or survey has to be carried out in accordance with the directions or guidelines of the competent authority. After tracing and identifying the illegally acquired property, the officer can make an order for seizing or freezing such property, if he has reason to believe that the property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating the proceeding relating to forfeiture of that property.

6.It is thus beyond cavil that the power to seize or freeze a property can be exercised only if there is reason to believe, based on inquiry, investigation or survey, that the property is illegally acquired. The ‘reason to believe’ should be based on cogent materials and not mere assumptions. Going by the definition of 'illegally acquired property' in Section 68B(g), for a property to be illegally acquired, it should have been acquired wholly or partly or by means of any income, earnings or assets derived or obtained from or attributable to the contravention of the provisions of the NDPS Act. The Supreme Court in **Aslam Mohammod**

Merchant v. Competent Authority and Others [2008 14 SCC 186] has held that, in order to forfeit a property in terms of Chapter VA of NDPS Act, a direct nexus/ link is necessary between the property sought to be forfeited and the properties illegally acquired.

7. As rightly contended by the learned counsel for the petitioners, by no stretch of imagination can the scooter purchased by the petitioners in 2020, when their son was aged only 14 years, be termed as illegally acquired property by reason of he being arraigned as an accused in an NDPS crime in the year 2025. The Investigating Officer cannot have a case that the petitioners' son had derived income by contravening the provisions of the NDPS Act way back in the year 2020. In such circumstances, the initiation of proceedings for forfeiture by issuing Annexure - C notice is an abuse of process and hence, liable to be interfered with.

For the aforementioned reasons, the Criminal M.C is allowed and Annexure-C, quashed.

sd/-

V.G.ARUN

JUDGE

AKH/sj

APPENDIX OF CRL.MC 7306/2025

PETITIONER ANNEXURES

Annexure-A	**A TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE VEHICLE.**
Annexure-B	**A TRUE COPY OF THE FIR IN CRIME NO. 446/2025 OF CHERPULASSERRY POLICE STATION DATED 27.05.2025.**
Annexure-C	**A TRUE COPY OF THE NOTICE DATED 12.08.2025 ISSUED BY THE 2ND RESPONDENT.**