

a aforesaid period of time. It will be open to the State to proceed against the erring official(s) including the respondent No.4.

b 38. Keeping in view the aforesaid discussion, the writ petition is *allowed* with costs as aforesaid. Impugned FIR dated 13.9.2025 lodged by opposite party no.4 as case crime no.0239 of 2025 at police station - Matera, District Bahraich, under Sections 140 (1), 316(2), 317 (2) of B.N.S. and Section 3(1)(5) of the Act, 2021 is quashed. Consequences to follow. Petitioner no.1 shall immediately be released if not wanted in any other case.

c 39. The Court records the fair assistance rendered by Dr. V.K. Singh, learned Government Advocate and Shri G.D. Bhatt, learned Additional Government Advocate.

40. The records are returned back.

d **Result:-** Writ petition allowed with costs. Impugned FIR dated 13.9.2025 and all consequential proceedings quashed. Petitioner no.1 directed to be released immediately if not wanted in any other case. Exemplary costs of Rs. 75,000 imposed on the State.

**ABC 2025 (II) 1137 KER
ACQUITTAL & BAIL CASES
HIGH COURT OF KERALA**

(V.G. Arun, J.)

Criminal MC No. 7306 of 2025

Decided On 7 October, 2025

USMAN KUNJU & ANOTHER

- *Petitioners(s).*

Versus

f **STATE OF KERALA & ANOTHER**

- *Respondent(s).*

g **Law Covered:-** (A) *Narcotic Drugs & Psychotropic Substances Act, 1985 - Sections 68-E & 68-F - Illegally Acquired Property - Forfeiture Proceedings - Seizure/Freezing Notice - Notice proposing seizure/confiscation of a vehicle was challenged - Property must be 'illegally acquired' to be subjected to forfeiture proceedings under Chapter V-A of the NDPS Act - 'Reason to believe' for seizing property must be based on cogent material and not mere assumptions - A direct nexus between the property sought to be forfeited and the contravention of the NDPS Act is essential - A vehicle purchased by*

h *parents in 2020 cannot be termed 'illegally acquired' based on their son's involvement in an NDPS crime in 2025, when he was a minor at the time of purchase - Initiating forfeiture proceedings on such facts amounts to an abuse of process - Notice quashed. (Paras 1--7)*

(B) *Narcotic Drugs & Psychotropic Substances Act, 1985 - Section 68B(g) - 'Illegally Acquired Property' - Definition &*

December 2025

Interpretation - 'Illegally acquired property' defined as property acquired by means of income or assets derived from contravention of the NDPS Act - The definition necessitates a clear and direct link between the property and the illicit activity - Property acquired from legitimate, independent sources prior to any alleged offence cannot be forfeited under this provision. (Paras 5-6) **a**

Facts:- The petitioners, parents of an accused in an NDPS case, challenged a notice (Annexure-C) issued by the police proposing to confiscate their scooter under Section 68-F of the NDPS Act. The authorities claimed the vehicle was purchased using proceeds from their son's narcotic dealings. The petitioners contended that the scooter was bought and registered in 2020, when their son was only 14 years old, and thus could not be linked to any NDPS contravention. **b**

The High Court analyzed the scheme under Sections 68-E and 68-F of the NDPS Act. It emphasized that the power to seize or freeze property is contingent upon the officer having a 'reason to believe', based on inquiry or investigation, that the property is 'illegally acquired' as defined under Section 68B(g). Relying on the Supreme Court precedent in *Aslam Mohammad Merchant*, the Court held that a direct nexus between the property and the illicit activity is mandatory. **c**

The Court found no plausible connection between the scooter purchased in 2020 and the son's alleged offence in 2025. Since the son was a minor at the time of purchase, the foundational requirement of the property being derived from NDPS contraventions was absent. Consequently, the issuance of the confiscation notice was held to be without legal basis and an abuse of process, leading to its quashing. **d**

Law of relief:- 'Illegally acquired property' defined as derived from contravention of the NDPS Act -necessitates a clear and direct link between the property and the illicit activity. **e**

Counsel:- **f**

For Petitioners: Mohanan M.K., Adv., Steevaugh Shaji Cherian, Advs. **g**

For State : Vipin Narayanan, Public Prosecutor

Cases Referred:-

1. *Aslam Mohammad Merchant v. Competent Authority and Others:* (2008) 14 SCC 186 (Paras 5-6) **h**

ORDER

V.G. ARUN, J.: - 1. 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

December 2025

a 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.

b 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.

c 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.

d 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.

e (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.

f (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.

g (3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in subsection (1) in accordance with such directions of guidelines as the competent authority may make or issue in this behalf.

h **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:

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 Mohammad Merchant v. Competent Authority and Others*, [2008 14 SCC 186] has held that, in

December 2025

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