

GAHC010122112025



2026:GAU-AS:650

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1461/2025

ROHINI ABHAIPURIA
PROP. OF M/S RONGMON POULTRY RESIDENT OF C/O JUNALI GOGOI
NEAR NAHARANI MEDICAL NAHARANI BLOCK P.O. KONWARI GAON P.S.
DIBRUGARH, DISTRICT DIBRUGARH, ASSAM
VERSUS
M/S K G TRADERS
REPRESENTED BY ITS WORKING PARTNER SRI KHANJAN GOGOI,
SITUATED AT- SWAHID KHAGESWAR BAZAR PARBOTIA ROAD TINUKIA,
P.O., P.S. AND DISTRICT TINSUKIA, ASSAM, PIN- 786125

Advocate for the Petitioner : MR. A K GUPTA, MR. R S MISHRA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 21.01.2026

- 1.** Heard Mr. A. K. Gupta, learned counsel for the petitioner.
- 2.** This is an application filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 against the order dated 25.04.20025 passed by the learned Sessions Judge, Tinsukia in Criminal Appeal No.06(2)/2025.
- 3.** The petitioner was convicted under Section 138 of the N.I. Act, passed by

the learned Additional Chief Judicial Magistrate, Tinsukia. He filed an Appeal before the Court of the Sessions Judge and prayed for waiving the provision of law as laid down in Section 148 of the N.I. Act. The learned Appellate Court refused the said prayer.

4. I have considered the submissions made by the learned counsel for both sides.

5. This Court is of the opinion that at this stage no notice is required to be sent to the respondent.

6. Section 148 uses the word "**may**", when there is a may the Court is to exercise judicial discretion.

7. From the impugned order dated 25.04.20205 it appears that the learned Appellate Court did not apply judicial mind while considering the prayer of the petitioner.

8. In "***Jambro Vandari v. N.P. State Industrial Development Corporation Ltd. & Anr***", the Hon'ble Supreme Court has held that the provision of law as laid down under Section 148 is not a mandatory one.

9. Under the aforesaid circumstances, this Court is of the opinion that the learned Trial Court did not exercise judicial mind while passing the order dated 25.04.2025. Therefore, the said order is bad in law and stands set aside.

10. The Appellate Court is directed to dispose of the Appeal expeditiously in accordance with the procedure as laid down by law.

11. With the aforesaid direction, the Criminal Petition stands disposed of.

JUDGE

Comparing Assistant