

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
44TH COURT, ANDHERI, MUMBAI.

C.C.No.59/SW/2025

Farid Kamaluddin Shaikh

.... Complainant

V/s.

Rizwan Abdul Latif Nakhwa

.... Accused

ORDER BELOW EXH.1.

(Passed on 02/12/2025)

This is a private complaint case wherein the complainant alleged that the accused appointed him as a Director in the company M/s.Megas Architectural Services Pvt.Ltd., and promised to pay the agreed profit on getting the projects. But thereafter, the accused did not pay him the due remuneration and profit in spite of having got the monetary benefits from the complainant and thus the accused cheated him and committed criminal breach of trust.

2. In view of the complaint the complainant was examined. In the case of **Sri Basanagauda R. Patil (Yatnal) Vs Sri Shivananda S. Patil (Criminal Petition No.7526 of 2024** decided on 27/09/2024) the Hon'ble Karnataka High Court observed that

“A complaint is presented before the Magistrate under section 223 of the Bharatiya Nagarik Suraksha Sanhita; on presentation of the complaint, it would be a duty of the Magistrate, concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witness present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The Magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter”.

3. In view of the ratio laid down in the citation *supra* and the provisions of section 223 of the Bharatiya Nagarik Suraksha Sanhita, this Court is of humble opinion that before taking the cognizance under section 223 of the Bharatiya Nagarik Suraksha Sanhita, the accused needs to be heard. Hence, I proceed to pass the following order:

ORDER

Issue notice to the accused.

Sd/-

(Sujitkumar C. Tayde)
Judicial Magistrate First Class,
44th Court, Andheri, Mumbai.

DATE: 02/12/2025.