

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1247 OF 2018

Dr. Nitin Baban Dighe,
Age- 41 years, Occu- Medical Practitioner,
R/o 1300 Ambika Complex, Sector-7,
Ghansoli, New Mumbai.

... **Applicant**

Versus

1) The State of Maharashtra
Through Police Station Topkhana,
Ahmednagar, Tq. & Dist. Ahmednagar

2) Madan Sampatrao Adhav,
Age: 33 years, Occ. Business,
R/o Raghvendra Swami Nagar,
Bolhegaon, Tq. Dist. Ahmednagar .

... **Respondents**

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Mr. A.V. Lavte h/f. Salunke Sudarshan J., Advocate for the Applicant.

Mr. A.M. Phule, A.P.P. for respondent-State.

Mr. Niteen V. Gaware, Advocate for Respondent no.2.

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE : 18.04.2019

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.

2. The present proceeding is filed for relief of quashing of F.I.R. No. I-391 of 2017 registered with Topkhana Police Station, Ahmednagar for the offences punishable under Section 420 and 406 of the I.P.C. The respondent

no.2 has given the F.I.R.

3. In F.I.R. the allegations made against the present applicant is that he was given the job of publicity in respect of Marathi movie Ghooma and that he did not perform his obligation and due to that the producers sustained loss and they are cheated by the present applicant. The allegations made in the F.I.R. and the record of agreement show that not a single pie was given by the first informant to the present applicant for publicity. As per the agreement the applicant was expected to spend on publicity and if there was a profit made by the movie then only he was entitled to get share in the profit. For publicity he had engaged under concern like Pickle Entertainment, Distributor and he had given some amount by way of cheque to the distributor. That cheque also bounced. However, the submissions made show that the Pickle Entertainment Mumbai did not take action against the present applicant. The submissions made show that the said concern did not distribute or release the movie.

4. In view of the contentions of the agreement and nature of allegations this Court holds that at the most it can be said that the present applicant did not perform as per the promise given by him in the agreement. However, it is required to be kept in mind that only after spending on the publicity he was to get share in the profit if the movie had made any profit. That did not happened. In view of the definition of cheating and breach of

trust given in Section 415 and 405, this Court holds that the ingredients of both offences are not made out. It will be abuse of process of law if case is filed against the applicant and is made to face the trail for the aforesaid crime.

5. The learned counsel for the respondent no.2 placed reliance on some observations made by the Apex Court in the case of **M. Krishnan V/s. Vijay Singh; AIR 2001 (SC) 3014**. In this case the apex court has observed that the matter may involve both civil liability and criminal liability. There cannot be dispute over this preposition. In the present matter there is no question of involvement of criminal liability.

6. In the result, the application is allowed. Relief is granted in terms of prayer clause C, D1 and D2. Rule made absolute in those terms.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]