

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL WRIT PETITION NO. 338 OF 2019

(Shailesh Manohar Patil .vs.. Sau. Deepali Shailesh Patil and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.D. Bhate, Counsel for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 27-06-2019

The petitioner-husband is aggrieved by the order dated 24-1-2019 whereby the Judicial Magistrate First Class, Khamgaon rejected the application under Section 91 of the Criminal Procedure Code (Code) to issue direction to the Principal of Krishnai Little Flower School, Khamgaon to produce on record salary certificates/slips of the wife for the preceding twelve months and details regarding her employment.

2. The learned Counsel states that the application for interim maintenance is fixed for hearing on 28-6-2019.

3. It is well settled, that the issue of interim maintenance can be decided, and should ordinarily be decided by the Court on the basis of the affidavits and the material on record and is not necessary to permit the parties to adduce evidence.

4. This Court was of the *prima facie* view that the rival contentions and the justification, if any, for exercise

of power under Section 91 of the Code may be looked into by the learned Magistrate once the evidence commences.

5. At this stage, the learned Counsel for the petitioner seeks leave to withdraw the petition with liberty to agitate the contention at an appropriate stage.

6. The petition is disposed of as withdrawn.

7. The learned Magistrate shall hear the parties and decide the application for interim maintenance within two weeks from today.

8. It is made clear that once the evidence begin, the petitioner shall be entitled to prefer an application under Section 91 of the Code which shall be considered on its own merits. The observations made by the learned Magistrate in the order impugned dated 24-1-2019 below Exhibit 16 shall not influence the decision on the application under Section 91 of the Code which may be preferred by the petitioner-husband once the evidence commences.

9. The registry shall bring this order to the notice of the learned Magistrate.

JUDGE