

**Court No. - 87**

**Case :-** CRIMINAL REVISION No. - 6106 of 2023

**Revisionist :-** Dr. Virender Kumar

**Opposite Party :-** State of U.P. and Another

**Counsel for Revisionist :-** Rishabh Agarwal

**Counsel for Opposite Party :-** G.A., Satya Narayan Yadav

**Hon'ble Manjive Shukla, J.**

1. Heard Sri Rishabh Agarwal, learned counsel appearing for the revisionist, learned A.G.A. appearing for the State and Sri Arun Kumar Yadav, holding brief of Sri Satya Narayan Yadav, learned counsel appearing for Opposite Party No.2.

2. The instant revision has been filed challenging therein the order dated 13.4.2023 passed by the Additional Principal Judge, Family Court, Firozabad in Case No.141 of 2019, Smt. Jyotsana Vs. Dr. Virender Kumar whereby interim maintenance amounting Rs.7,000/- has been awarded in favour of Opposite Party No.2 under the proviso appended to Section 125 Cr.P.C.

3. It has been contended on behalf of the revisionist that in the proceedings under Section 125 Cr.P.C., categorical reply was filed wherein it was stated that Opposite Party No.2 is in adultery and therefore, in view of the provisions contained under Section 125(4) Cr.P.C., she is not entitled either for interim maintenance or for final maintenance. Learned counsel appearing for the revisionist has invited attention of this Court towards the provisions made in Section 125(4) Cr.P.C. which is extracted as under:-

*Section 125:*

*"4. No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."*

4. From a bare perusal of Section 125(4) Cr.P.C., it is patently manifest that once there is categorical allegation of adultery against the wife, then the court concerned dealing with the matter under Section 125 Cr.P.C. has to decide the issue of adultery and even interim maintenance can be awarded only after recording a finding on that issue.

5. This Court prima facie finds that the exercise as required under

Section 125(4) Cr.P.C. is completely missing in the matter and without recording any finding on the issue of adultery, the impugned order dated 13.4.2023 has been passed whereby interim maintenance amounting Rs.7,000/- has been awarded in favour of Opposite Party No.2.

6. Matter requires consideration.

7. Issue notice to Opposite Party No.2.

8. Let counter affidavit be filed by the opposite parties within a period of three weeks. One week thereafter shall be available to the revisionist for filing rejoinder affidavit.

9. List this matter on 25.11.2024.

10. Till the next date of listing, operation and implementation of the impugned order dated 13.4.2023 passed in Case No.141 of 2019 (Smt. Jyotsana Vs. Dr. Virender Kumar), shall remain stayed.

11. However, it is made clear that this interim order shall not come in the way of passing of final order by the court concerned under Section 125 Cr.P.C.

**Order Date :- 16.10.2024**

Salim