

---

**(2011) 03 AHC CK 0124**  
**In the Allahabad High Court**  
**Case No : Criminal Revision No. 1440 of 2011**

|               |    |            |
|---------------|----|------------|
| Ajay          | Vs | APPELLANT  |
| State of U.P. |    | RESPONDENT |

---

**Date of Decision :** 08-03-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 319  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 323

**Citation :** (2011) 3 ADJ 618 : (2011) 3 AWC 207 : (2011) 3 Crimes 476 :  
(2011) 8 RCR(Criminal) 1958

**Hon'ble Judges :** Vinod Prasad, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

## Judgement

Vinod Prasad, J.—Learned Counsel for the revisionist is permitted to add ground which now is being canvassed in this revision.

As prayed jointly by both the sides, this revision is finally heard at the admission stage itself.

2. Revisionist Ajay is aggrieved by the impugned order dated 11.2.2011 passed by Special/Additional Sessions Judge, FTC-I, Saharanpur in Special Session Trial No. 374 of 2008 under Sections 147, 148, 452, 323, 324, 294, 504 I.P.C. and 3(1)(X) SC/ST Act, Police Station Kotwali Dehat, District Saharanpur. By the impugned order, the revisionist is directed to be summoned by the trial Judge wielding powers u/s 319 Code of Criminal Procedure and 21.2.2011 was fixed for the said purpose.

3. The impugned order has been passed while judgmenting S.S.T. No. 374 of 2008 State v. Navneet and Ors. relating to the aforesaid offences and Crime No. 551 of 2006, Police Station Kotwali Dehat, District Saharanpur.

4. I have heard Sri Raghuraj Kishore learned Counsel for the revisionist and Sri Pantanjali Mishra learned A.G.A

Learned Counsel for the revisionist submits that power u/s 319 Code of Criminal Procedure, as the enacted statute ordains, can be exercised only during pendency of the trial. If the trial is concluded, no power under the aforesaid Section can be wielded/utilized by the trial Judge. He submits that after the date when judgment was delivered, the Court became functus officio and, therefore, the Court could not have fixed a future date to exercise power u/s 319 Code of Criminal Procedure. In view of the above, the impugned order cannot be sustained and deserves to be rectified.

5. Learned A.G.A also could not defend the impugned order as in his opinion, the impugned order against the revisionist cannot be countenanced.

I have perused the impugned judgment and order. While judgmenting S.S.T. No. 374 of 2008 State v. Navneet and Ors. for the aforementioned offences, the trial Judge convicted all the accused persons for charges under Sections 294, 147, 148, 452, 323/149, 324/149, 504 I.P.C. and 3(1)(X) SC/ST Act. While sentencing the aforesaid accused persons for the aforesaid offences, the trial Judge directed that record in respect of the revisionist Ajay be separated and for issuing process, 21.2.2011 was fixed. This order was passed on 11.2.2011. As the record reveals that on 11.2.2011, the trial Judge judgmented the aforesaid Special Session Trial, therefore, after judgmenting the case, the trial Judge became functus officio. He could not have taken any proceedings in respect of other person wielding power u/s 319 Code of Criminal Procedure, which could have been utilized only during commencement of the trial. After conclusion of the case, no Court can utilize power u/s 319 Code of Criminal Procedure and start afresh trial in respect of separate accused.

6. Phraseology of Section 319 Code of Criminal Procedure further indicates that power u/s 319 Code of Criminal Procedure can be utilized to add any person as an accused who is not already facing trial, only during pendency of the inquiry or trial. That Section further ordains that in the event the trial Judge harbinger intention to add any accused, he should have stayed the trial and take up trial in respect of newly added accused simultaneously including examination of the witnesses afresh. To clarify, Section 319 Code of Criminal Procedure is reproduced hereinbelow;

319. Power to proceed against other persons appearing to be guilty of offence.-  
(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may requires, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a

summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under Sub-section (1) then:

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of Clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

Besides, preceeding observation, the aforesaid Section further indicates that only that person who could have been or ought to have been tried alongwith already being tried accused, can be arrayed as an accused and can be asked to stand the trial. That is not the case here. In this revision, the revisionist was not summoned on or before 11.2.2011 when the trial Judge became functus officio by judgmenting the aforesaid Special Session Trial.

In view of the above, the impugned order against the revisionist cannot be sustained and is liable to be set aside.

7. Hence, the impugned order dated 11.2.2011 passed by Special/Additional Sessions Judge, FTC No. 1, Saharanpur, in S.S.T. No. 374 of 2008, separating the record and directing the case to be put up on 21.2.2011 for issuing processes against the revisionist is set aside. The instant revision is allowed.