DATE	ORDER WITH SIGNATURE OF JUDGE

1. For hearing of MA-1212/2016
2. For katcha peshi.
3. For hearing of MA-2251/2016

<u>11.04.2017</u>

Ms. Nasira Shaikh, Advocate for appellant.
Syed Meeral Shah Bukhari, D.P.G
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Appellant Mumtaz alias Moulai Khoso was tried in absentia alongwith other accused by learned Judge, Anti-Terrorism Court, Hyderabad in Special Case No.22 of 2003 for offences under Sections 324, 353 and 6/7 of Anti-Terrorism Act, 1997. By judgment dated 09.03.2005, the accused Nawab Khskheli and Majnoo Rind present before the Trial Court alongwith present appellant and Dilsher, who were absconding, were found guilty and convicted under Section 324 & 353 PPC read with Section 149 PPC and read with Section 6 of Anti-Terrorism Act, 1997 and they were punished under Section 7(b) of Anti-Terrorism Act, 1997 and sentenced to 07 years R.I and to pay a fine of Rs.50,000/- each, the fine was ordered to be deposited in Government treasury. In case of default in payment of fine, the accused were ordered to suffer R.I for 06 months more. Benefit of Section 382(B) Cr.P.C was extended to co-accused Nawab Khaskheli and Majnoo Rind. N.B.Ws were issued against the present appellant and Dilsher.

It appears that accused Nawab Khaskheli and Majnoo Rind filed Criminal Appeal No.D-35/2005, which was dismissed by this Court vide judgment dated 22.04.2009. However, sentence awarded to the appellants by the Trial Court was modified to one already undergone by them.

Ms. Nasira Shaikh, Advocate appeared on behalf of appellant Mumtaz alias Moulai Khoso submits that appellant Mumtaz was arrested in the year 2015. Without approaching the Trial Court in the first instance, the appeal has been preferred against the appellant Mumtaz alias Moulai Khoso before this Court. Learned Advocate for the appellant mainly contended that appellant Mumtaz alias Moulai Khoso was convicted and sentenced in his absentia, as such his conviction was violative of Article 9 and 10(1) of the Constitution and Section 10(11-A) of the Anti-Terrorism Act, 1997. Thus, conviction cannot be allowed to sustain. It is further contended that the appellant was not afforded any opportunity of hearing and he was condemned unheard. When the Counsel for the appellant were asked that where was the provision in the law that the appellant could approach the Trial Court in the first instance, as the appellant has approached this Court directly? It is replied that the Trial Court had already convicted and sentenced the appellant in his absentia and there was no hope that the Trial Court would change its mind. In support of her contentions, reliance has been placed upon the case of *MIR IKHLAQ AHMAD & OTHER V/S. THE STATE (2008 SCMR 951).*

Syed Meeral Shah Bukhari, learned D.P.G appearing for the State has conceded to the contentions raised by learned Advocate for the appellant that Trial Court in absentia was violative of the principles of natural justice and it was also violative of Article 9 and 10(1) of the Constitution and Section 10(11-A) of the Anti-Terrorism Act, 1997. Learned D.P.G submitted that since the co-accused, who faced the trial, were convicted by the Trial Court and filed appeal and their appeal has been dismissed with the modification in the sentence, appropriate course in the circumstances would be to remand the case to the Trial Court for proceeding afresh in accordance with law. Counsel appearing on behalf of the appellant has also made the same request.

In view of the above and keeping in view the legal position as enunciated by the Honourable Supreme Court in the case of *Mir Ikhlaq Ahmad and other (supra)*, we set aside the conviction and sentence recorded against the appellant in his absentia vide judgment dated 09.03.2005 and remand the case to the Trial Court for proceeding afresh in accordance with law. Trial Court shall conclude the trial within a period of three months under intimation to this Court.

Appeal stands disposed of.

JUDGE

JUDGE

Shahid