



Neutral Citation Number: [2023] EWHC 2845 (KB)

Case No: QB-2022-001950

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/11/2023

Before :

MASTER DAVISON

Between :

MS SANA HAMEED

Claimant

- and -

MS SHANZAY SHAHBAZ SHEIKH

Defendant

The **claimant** appeared in person
Ms **Melissa Stock** (instructed by **Pactum Law**) for the **defendant**

Hearing date: 7 November 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Master Davison:

1. By a Claim Form issued on 19 May 2022 the claimant seeks damages for libel.
2. The claimant is originally from Pakistan but has lived in London since around 2004. She is a frequent visitor to Lahore, where her family continue to reside. She works for an asset management company. She has also blogged via an Instagram page about fashion and travel. She has or has had some 22,000 followers.
3. The defendant is a social media influencer. She is a Pakistani national who, like the claimant, lives in London and frequently visits Lahore. She has some 500,000 followers across a number of social networking sites, which include @shanzaaysheikh.
4. In 2021 a number of Instagram “Gossip Pages” or “Hate Pages” (as the defendant, not unreasonably, characterised them) were created anonymously. To quote from the skeleton argument submitted by the defendant: “these pages were posting derogatory, defamatory and malicious comments about the defendant and other well-known individuals in Pakistan”. Beginning on 20 March 2021, the defendant instigated complaints to the Federal Investigation Agency of Pakistan (“the FIA”) seeking a criminal investigation of those parties who were behind the pages “Gossip Girl Lahore”, “Gossip Lounge”, “Gossip Girl World Magazine” and “Pakistani Phupoo”.

The first publication – the WhatsApp Message

5. The claimant alleges that on 3 June 2021 the defendant or persons acting on her behalf published on WhatsApp a photograph of her placed alongside an image of the Muppet character “Gonzo”. Overlaid on these images were the following words:

“EXPOSED!
@gossip_girl_lahore”

Beneath the images and caption were these words:

“We are working with FIA and ISI [Inter-Services Intelligence] to find out the people behind the page.

I have also received many messages from unknown people and accounts saying that this woman is behind gossip girl page. Do you guys know who she is? She lives in London.”

6. Either simultaneously with the WhatsApp message or very shortly afterwards when it was forwarded to others, images of two documents were published alongside. The first was an “Order for Attendance” to answer questions before an Investigating Officer of the FIA at the FIA’s Cyber Crime Reporting Centre, Lahore, (“the Attendance Order”). The Attendance Order was dated 3 June 2021 and was directed to the claimant, whose name and family address in Lahore were given. The second was a court order consisting of (what I take to be) a preliminary order dated 25 May 2021 and a final order dated 31 May 2021 for the registration of a FIR, (together “the Court Order”). (A “FIR” is a “First Information Report” which, I understand, has the effect in Pakistan of setting the process of criminal justice in motion.) The Court Order was made by a District & Sessions Judge in Lahore. The two orders together comprising the Court Order were

in response to a petition made by the defendant for “direction to [the Director of the FIA] for the registration of the criminal case against accused person under the relevant provisions of law”. As transmitted in the WhatsApp message or messages, the name of the petitioner (i.e. the defendant’s name) was redacted. Overlaid on the image of the Court Order were the words: “Court orders seeking direction to loudge [sic] FIR against culprits, who’re miss using [sic] identity of a natural person, making fake accounts, threatening,”. The Court Order did not name the claimant. But it bore the inquiry number 1352/21 and this number also appeared on the Attendance Order, which did name her.

7. It is alleged that the WhatsApp message was published to a substantial number of individuals and groups in Pakistan and the UK, a wide circulation having come about by the familiar means of forwarding and sharing.
8. The defendant maintains that she had nothing to do with the WhatsApp message; she neither published it nor instigated others to do so.
9. Though it does not impact on meaning, it is (and may in the future be) relevant to note that the image of the claimant alongside the image of Gonzo together with the caption “EXPOSED! @gossip_girl_lahore” (but not the words beneath) had already been created and sent in early April 2021 to various of the claimant’s friends by way of direct messages from dummy accounts operating from the UK; (see paragraph 9(iii) of the Particulars of Claim).

The four further publications relied upon

10. The claimant complains of four further publications. She alleges that on 3 June 2021 the defendant reposted an Instagram story first posted by a Ms Alyzeh Gabol (“the second publication”). This was essentially a “puff piece” about the success of her lawyer, Mr Harris Shahzad, in pursuing legal redress against “Hate Pages”. Four such were mentioned. They were @lahoregossipgirlxoxo; @gossip.shossip; @gossiplounge; and @pakistaniphuhoo. (The page @gossipgirllahore was not mentioned.) Ms Gabol had written: “Making fake accounts, posting someone’s pictures, violating dignity of a person, is a Henious [sic] crime”. And further down the story: “After that running away shows how coward you’re [sic].” And: “GOOD WORK OUR LAWYER @HARRISHAHZ IS TAKING DOWN THESE CULPRITS WHO ARE SPREADING FALSE ACCUSATIONS AND CHARACTER ASSASSINATING INNOCENT PEOPLE ESPECIALLY WOMEN CAUSING MENTAL TRAUMA AND WHAT NOT!! WE’LL SEE THEM BEHIND THE BARS SOON INSHALLAH ITS ALWAYS BETTER TO GO THROUGH THE LAW [Thank you emoji]”. When the defendant reposted the story she added the single word: “Excellent”.
11. The defendant says that her repost of the story was on 1 June 2021 not 3 June, i.e. that it predated the WhatsApp message.
12. The next (third) publication relied upon was a 3 June 2021 Instagram story consisting of a repost of a direct message sent to the defendant by one of her followers. Under an image of the Harris Shahzad story, this follower had written: “We don’t need shaitan and godforsaken dajjal . We have such toxic women among us. Even worse are the women who were forwarding the posts snapshots in groups and bitching. Just plain

sad! I don't understand how they can write such shit about other women and their kids and then sleep easy. I really wish she serves time in jail for this." Underneath this, the defendant wrote: "Indeed she will and her girl gang too". The post went on: "Worst are the people who are FOLLOWING them"; and "and this is NOT a justification that you guys are scared to unfollow because they will harm you. Itna Allah sai aur many sai daar laitay, ya daar lo k khud k ghar aulad hai Allah ki laathi BaiAwaaz hai"¹; and "Although I move around in the Lahori social crowd (sometimes only tho) but I'm so scared of them. They say anything about anyone without any accountability and second thought. It's just scary especially when one has kids and a family to whom your reputation matters. It's just sick."

13. The fourth publication relied upon was a 3 June 2021 repost of an Instagram story from @thestylejournal, a page maintained by Ms Alina Shahid. This post was a meme of a woman getting into her car and driving away. The caption to the meme was: "When the FIA knows your location". Underneath the meme were written the words: "Just to say you guy are [sic] from "respectable" family wont [sic] make you one [smiley face emoji] Ohhh! And the boys, enjoy until it comes on your wife/sister/mother [smiley face emoji] You know who you are!". When the defendant reposted this story she did so under the heading: "The other account you all should follow. Ladies, learn some morals from @thestylejournal_".
14. The fifth publication relied upon was a 3 June 2021 repost of an Instagram story from @PeoplePakistan (a page maintained by the defendant; but she reposted it on her @shanzaysheikh page). The story consisted of a photograph of a court building beneath which were the words: "Did you know? There is a law in Pakistan under which people who post inappropriate content on social media while being abroad could be held in a trial". The defendant reposted the story with a red heart emoji.

The scope of the hearing

15. By Application Notice dated 27 April 2023 the defendant sought a preliminary hearing on meaning and an extension of the time for filing a Defence until 14 days after the determination of meaning. The defendant asked that meaning be determined on paper. The application was referred to the judge in charge of the Media & Communications List, Nicklin J, who directed that meaning be determined at a hearing and released that hearing to me. It took place on 7 November 2023. I heard submissions from the defendant who was represented by counsel, Melissa Stock, and from the claimant, who was in person. (I mention that, although she has never practised, the claimant is a dual qualified barrister in Pakistan and London.)

Legal principles

16. The legal principles for determining the meaning of a publication are well established. Nicklin J summarised them in *Koutsogiannis v The Random House Group Limited* [2019] EWHC 48 (QB); [2020] 4 WLR 25 at paragraphs 11 & 12. That (now well-known) thirteen point summary has since been approved by the Court of Appeal in *Millett v Corbyn* [2021] EWCA Civ 567; [2021] EMLR 1. The Court's task is "to

¹ The claimant's (not necessarily agreed) translation of these words was: "Should have been scared of Allah and death instead or be scared that you have children in your home. Allah's invisible hand is silent." My determination of meaning does not depend upon a precise translation.

determine the single natural and ordinary meaning of the words”. This is “the meaning that the hypothetical reasonable reader would understand the words to bear”; see *Koutsogiannis* at paragraph 11. In the interests of brevity, I will not incorporate Nicklin J’s thirteen propositions into this judgment. But I have had close regard to them.

17. Also relevant in this case are so-called “Chase levels”. The following passage from *Gatley on Libel & Slander*, 13th Ed at 12-013 explains their role:

“An allegation can be published in such a way that it is made with varying degrees of certainty. This phenomenon was analysed in *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772, in which the Court of Appeal described three distinct levels of defamatory meaning: (1) that the claimant is guilty of some impugned behaviour; (2) that there are reasonable grounds to suspect that the claimant is guilty of the impugned behaviour; and (3) that there are grounds for investigating whether the claimant is guilty of the impugned behaviour. The approach to the defence of truth in these respective scenarios is somewhat different.”
18. With reference to the particular issues which arise in defamation claims relating to the meaning of publications on social media, I was taken by Ms Stock to some passages from the speech of Lord Kerr in *Stocker v Stocker* [2019] UKSC 17; [2020] AC 593 and some passages from the judgment of Warby J in *Monroe v Hopkins* [2017] EWHC 433 (QB) (approved by the Supreme Court in *Stocker*). I will not recite these passages. But I have taken them into account in what follows.
19. Notwithstanding the fact that principle (x) of *Koutsogiannis* clearly states that evidence is not admissible on meaning, both sides produced a witness statement in support of their respective positions. I had pre-read the statements. But I permitted no further reference to them and they have played no part in my determination.
20. I read the WhatsApp message and the other publications before I read the skeleton arguments and heard submissions. This was in order, as far as possible, to place me in the position of the ordinary reasonable reader and to enable me to capture my immediate impression of their meaning. I formed an impression as to meaning which the submissions have not substantially altered. However, I will set out the submissions that were urged on me before expressing my conclusions.

The submissions of the parties

21. I begin with the WhatsApp message. In her skeleton argument, Ms Stock advanced the submission that the words “I have also received many messages from unknown people that *this woman* [my emphasis] is behind gossip girl page” indicated that the author was using the image of the claimant “to attempt to identify the claimant” and that her image and the caption “EXPOSED! @gossip_girl_lahore” “served for reference purposes and therefore do not go to meaning in itself”; (skeleton paragraph 27). In her oral submissions, Ms Stock retreated from this somewhat unrealistic stance. She accepted that the photograph of the claimant and its caption did identify the claimant as the person behind the site. But she submitted that this was qualified by the words beneath and that, taking the publication as a whole (*Koutsogiannis* principle (viii)), the meaning was that there were grounds to investigate whether the person behind the page was the claimant.

22. As to the Attendance Order and the Court Order, Ms Stock’s position was as follows. First, she did not accept that images of these documents had necessarily been published simultaneously with the WhatsApp message. She accepted that they were published when the message was shared or forwarded. But those shares may not have been by the original publisher. Second, she submitted that the Attendance Order and the Court Order were covered by absolute privilege and had to be disregarded when considering meaning. For the latter proposition she relied upon *Westcott v Westcott* [2008] EWCA Civ 818. In that case, the defendant made a statement to the police in which she accused her father-in-law of assaulting her and her six month old baby. The statement led to the involvement of social services and had adverse consequences for the claimant. He brought a claim for damages for slander and libel. The claim was struck out on the basis that the statement was covered by absolute privilege. At paragraph 34 Ward LJ said this:
- “Because society expects that criminal activity will be reported and when reported investigated and, when appropriate, prosecuted, all those who participate in a criminal investigation are entitled to the benefit of absolute privilege in respects of the statements which they make”.
23. The claimant submitted that the meaning of the WhatsApp message was crystal clear. It identified her as the person behind the @gossip_girl_lahore page and conveyed the clear message that she was under investigation by the FIA.
24. As to the other publications, the submissions of the parties were principally directed to the question whether these publications referred to the claimant. The defendant’s stance was that they did not identify the claimant and therefore did not and could not defame her. The claimant, by contrast, submitted that the ordinary, reasonable reader would have taken them to refer to her. By reason of the WhatsApp message, which was in wide circulation, she was at the centre of a media storm in which she had been identified as the person behind one of the “Hate Pages” in question and who was under investigation by the Pakistani authorities on that account. (She maintained that this was the case whether the defendant was or was not the publisher of the WhatsApp message.) It was, she submitted, in these circumstances obvious that readers of the further publications would understand that she was the target of them and that they referred to her.
25. As I explained at the hearing, this is a question for another day. Whether a publication must be taken to refer to the claimant is a matter upon which evidence is admissible and usually required. The categories of such evidence are described in *Gatley* at 34-016 – 34-022. One category is direct evidence from witnesses who understood the publication to refer to the claimant (and the claimant in this case told me that she wished to deploy precisely such evidence). These are matters for a trial with oral evidence which can be tested by cross-examination.

Discussion and conclusions

26. Because there is uncertainty as to whether the WhatsApp message was originally published with the Attendance Order and the Court Order, my approach to meaning must be divided into two sections. First, I deal with the WhatsApp message on its own. The following features emerge clearly.

- i) The photograph is (and is accepted to be) a photograph of the claimant and it is juxtaposed with an image of Gonzo that is mocking and deriding of her.
- ii) The caption “EXPOSED! @gossip_girl_lahore” conveys to the reasonable reader that (i) the claimant has been guilty of reprehensible conduct which, (ii) she has hitherto been carrying on anonymously and which (iii) has now been brought to public light.
- iii) The caption contains a statement of fact, which is that the claimant is the person behind the page @gossip_girl_lahore.
- iv) The clarity of this statement of attribution is not qualified or diluted by the words that follow even though, on a close and literal construction, there is tension between the word “EXPOSED!” and the words “working ... *to find out* the people behind the site” and the words “messages ... *saying* that this woman is behind gossip girl page”, (my italics). Taken as a whole and given the medium (a WhatsApp message), the meaning is clear.
- v) The reference to working with the FIA and ISI conveys to the reasonable reader that there are grounds to investigate whether the claimant’s activities as the person behind the @gossip_girl_lahore page have transgressed the criminal law of Pakistan.

27. I find that the natural and ordinary meaning of the WhatsApp message on its own is:

The claimant is the person behind the page @gossip_girl_lahore, which she has been operating anonymously. She has now been exposed. *Her activity as the person behind the page is reprehensible because the page spreads malicious gossip. She is deserving of derision.* The FIA and ISI of Pakistan are involved and there are grounds to investigate whether the claimant has committed a criminal offence.

28. The words I have italicised are statements of opinion. The remainder are statements of fact. The statement is defamatory at common law.

29. Second, I deal with the WhatsApp message to the extent that it was published with images of the Attendance Order and the Court Order. These would have immediately identified the claimant to a wider audience than just those who knew her personally or by sight, (though, in this context, I would not overlook the percolating effect of an identification by photograph alone; it would reasonably be inferred that the claimant’s name would rapidly have become known to a good proportion of those who received the message). Taken with the WhatsApp message itself (which identified the claimant as the person behind the page) the documents would also convey to the reasonable reader that the claimant was subject to at least the preliminary stages of criminal process by the FIA for that activity and that there were reasonable grounds to suspect she had committed a criminal offence.

30. I find that the natural and ordinary meaning of the WhatsApp message taken with the Attendance Order and the Court Order is:

The claimant is the person behind the page @gossip_girl_lahore, which she has been operating anonymously. She has now been exposed. *Her activity as the person behind the page is reprehensible because the page spreads malicious gossip. She is deserving of derision.* The claimant is under active investigation by the FIA of Pakistan and there are reasonable grounds to suspect that she has committed a criminal offence.

31. The comments at paragraph 28 apply *mutatis mutandis*.
32. I do not think that the absolute immunity described in *Westcott v Westcott* has any role in this determination of meaning. Indeed, I think that this point is misconceived. The claimant is not complaining that the Attendance Order and the Court Order are in themselves defamatory of her. Nor does she complain about the content of the defendant's petition. (There is no evidence that she knows its content.) Her complaint is that these two Orders were published in conjunction with the WhatsApp message and gave that message a meaning, or added meaning, which without them it would not bear. That does not offend the principle set out in *Westcott v Westcott* nor, if I were to have upheld the defendant's argument, would it advance the policy behind that decision. That is as far as I need to go for present purposes. But I would add that I think that there is a more basic objection to Ms Stock's argument. The immunity is an immunity from suit for defamatory statements made in the course of judicial proceedings. A defendant who repeats those defamatory statements in a different context and for a different purpose would not enjoy the immunity.
33. I can deal with the remainder of the publications more shortly. With the exception of the fourth publication, the meanings are clear and, as noted above, the submissions of the parties were mainly directed to the issue whether the claimant was identified or referred to rather than specifically the issue of meaning.
34. I find that the meaning of the second publication is as follows:

The persons behind fake accounts, which include @lahoregossipgirlxoxo; @gossip.shossip; @gossiplounge; and @pakistaniphuphoo, *act reprehensibly and commit a heinous crime in that they violate the dignity of others, they make false accusations, they assassinate the character of innocent people, especially women, and cause mental trauma. They are deserving of punishment by imprisonment.*
35. The words italicised are statements of opinion; the remainder are statements of fact. If the words are to be taken to identify or refer to the claimant as a person behind a fake account, then the statement is defamatory of her at common law. For this publication, as for all the further publications, it will be for the claimant to demonstrate that the words were understood to refer to her.
36. I find that the meaning of the third publication is as follows:

The persons referred to in the second publication (i.e. those behind fake accounts) *act extremely reprehensibly. They are thoughtless, sick and sad.* They put people in fear. They damage people's reputations to the detriment of them and their families. *They are deserving of imprisonment and will go to prison. Persons who follow their accounts also act reprehensibly.*

37. The words italicised are statements of opinion; the remainder are statements of fact. If the words are to be taken to identify or refer to the claimant as a person behind a fake account, then the statement is defamatory of her at common law. (Whether this publication referred to the claimant may boil down to the question whether “she” in the words “I really wish *she* serves time in jail for this” and “Indeed *she* will and her girl gang too” must be taken to refer to her.)
38. The meaning of the fourth publication is more oblique. It is addressed to an individual (a woman) and the sense of it lies somewhere between a warning and an admonition. I find that its meaning is as follows:

The FIA knows your location and will be pursuing you. The FIA’s interest in you shows that there are reasonable grounds to suspect that you are guilty of a criminal offence. *Your respectable family background will be no answer to legal process by the FIA.*

39. The words italicised are statements of opinion; the remainder are statements of fact. If the words are to be taken to be addressing and thus identifying and referring to the claimant as the person whose location the FIA knows, then the statement is defamatory of her at common law.
40. The fifth publication has the same character as the fourth, save that it is addressed to a general audience rather than a specific person. I find that the meaning of the fifth publication is as follows:

Those who post inappropriate content on social media can be held legally accountable before a court in Pakistan, notwithstanding that they have done so from abroad.

41. The statement is a statement of fact. If the words are to be taken to identify and refer to the claimant as a person who has posted inappropriate content from outside Pakistan, then the statement is defamatory of her at common law.

Further steps

42. When the claimant amended her Particulars of Claim, as she was directed to do by the order dated 17 March 2023, she added a claim for misuse of private information. Given that the order was to serve re-drafted Particulars of Claim which complied with CPR PD 53B and was not a blanket permission to amend, the claimant needs permission to rely upon these paragraphs (which the defendant objects to). I will direct that, if so advised, she must apply for permission within 21 days. I will direct that a Defence must be filed within 14 days of determination of that application, or, if no application is made, within 14 days of expiry of the time limit I have set for making the application.
43. I will then list the case for a further CMC or CCMC. But, as always, it is open to the parties to agree directions taking this claim forward and to submit them to me for approval.
44. A separate and distinct issue arises from the claimant’s assertion in paragraphs i - iii of her Amended Particulars of Claim that on 27 March 2023 she accepted the defendant’s offer of settlement. The defendant’s Defence should address this and the parties should

disclose the relevant correspondence / documents at this stage (rather than at the stage of general disclosure). I will then consider whether this is a matter that should be listed as a preliminary issue.

45. I invite the parties to agree an order reflecting the above.