



Neutral Citation Number: [2022] EWHC 905 (QB)

Case No: QB-2020-002305

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/04/2022

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

NASIR MEHMOOD (BUTT)

Claimant

- and -

DUNYA NEWS LIMITED

Defendant

Mr David Lemer (instructed by **Stone White Solicitors**) for the **Claimant**
Dr Anton van Dellen (instructed by **Reliance Solicitors**) for the **Defendant**

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 9am 13 April 2022.

.....

THE HONOURABLE MRS JUSTICE COLLINS RICE

Mrs Justice Collins Rice :

Introduction

1. The Claimant, Mr Mehmood (also known as Mr Butt), is a Pakistani national, resident in the UK. He is Senior Vice President of the UK chapter of the Pakistani Muslim League Nawaz, a large political party in Pakistan.
2. The Defendant is the publisher of the Dunya News Channel, a 24-hour Urdu-language TV news and current affairs channel, broadcasting in the UK.
3. Mr Mehmood brings a libel claim against Dunya News because of material it broadcast about him on 6th, 7th and 12th July 2019.
4. By Order of Master Dagnall dated 22nd December 2021, the parties have filed written submissions on the preliminary issues of (a) the natural and ordinary meaning of the broadcasts complained of; (b) whether, in that meaning, they amount to factual allegations or statements of opinion; and (c) whether they are defamatory of Mr Mehmood at common law. This is a ruling on those preliminary issues, determined on the papers.

Legal principles

5. There is no dispute as to the applicable legal principles. I am grateful to Counsel for referring me to the relevant authorities, to which I have directed myself. I note in particular the useful and well-established guidance on ‘meaning’ distilled from those authorities (including that of the Supreme Court in *Stocker v Stocker* [2020] AC 593) and set out in *Koutsogiannis v Random House Group* [2020] 4 WLR 25, at paragraphs 11 and 12. The following briefly summarises that guidance as it applies to the present case.
6. My task is to determine the single natural and ordinary meaning of the broadcasts complained of, which is the meaning the hypothetical ordinary, reasonable and typical viewer of these programmes would understand them to bear. The governing principle is reasonableness. The intention of the broadcaster is irrelevant in law: the test focuses on how material is viewed, so it is objective, not subjective.
7. An ordinary, reasonable viewer of a rolling news and current affairs programme will consume material swiftly and impressionistically, at a single viewing, forming a rapid impression in context of what is conveyed before moving on to the next item. The viewer may watch a political discussion programme rather more reflectively, but again at a single viewing. The viewer is interested in the broadcasts, but neither naïve nor suspicious; is able to read between the lines and pick up an implication; and is allowed a certain amount of loose thinking without being avid for scandal.
8. I am guided away from over-elaborate or lawyerly analysis of text. That is not how news and current affairs broadcasts are consumed. I need to avoid both literalism, and any strained or forced interpretation. I can and must determine the single meaning I myself consider correct, and am not bound by the meanings advanced by the parties (so

long as I do not alight on something more injurious than the claimant's pleaded meaning).

9. Natural and ordinary meaning does not rely on the viewer having any special knowledge. No evidence beyond the material complained of is admissible as to what it means. But common knowledge, a typical perspective and immediate context can and should be factored in.
10. I have directed myself to Brown v Bower [2018] EMLR 9 for particular guidance where a publication complained of includes the repetition or quotation of others' words. I need to consider whether an allegation has been '*adopted or endorsed*' – either by bald, unqualified, repetition or by contextual indication of endorsement – or whether it is clear from context that the publisher is putting distance between itself and others' allegations. The meaning attached to the repetition has to be considered in its full context – it is a fact-sensitive exercise.
11. I have further directed myself to Koutsogiannis at paragraphs 16 and 17, as well as to Millett v Corbyn [2021] EWCA Civ 567, for guidance on considering whether the material complained of contains allegations of fact or opinion. On this, again, the question is how the material would strike the ordinary, reasonable viewer. Subject matter and context can be especially important here. "*Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.*" but sometimes care is needed: there is a difference between comment which is pure opinion and comment which is an imputation of underlying fact.
12. I am reminded by the authorities that the test for the difference between fact and opinion is an objective one. That comes back to how the words would strike the ordinary reasonable reader. I have to look at the substance, not the intention of the writer or any label the writer may have attached.
13. Factual allegations can be published with varying degrees of certainty as to what is being imputed. These degrees of certainty have been classically analysed at three distinct levels : level 1: the claimant is 'guilty' of the conduct alleged; level 2: there is 'reason to suspect' the claimant is guilty of the conduct alleged; and level 3: there are 'grounds for investigating whether' the claimant is guilty of the conduct alleged (Chase v. News Group Newspapers [2002] EWCA Civ 172).
14. The test at common law for whether a (natural and ordinary) meaning is defamatory is well-established: whether it substantially affects in an adverse manner the attitude of other people towards a claimant, or has a tendency to do so. Some recent authorities put it in terms of identifying that a claimant has breached the common, shared values of our society (Millett v Corbyn). This is not about actual impact at this stage, it is about the meaning of the words themselves and their inherent tendency to damage someone's reputation. 'Substantially' imports a threshold of gravity or seriousness (Thornton v Telegraph Media Group Ltd [2010] EWHC 1414).
15. While there are three preliminary issues I am required to determine, the authorities also counsel against the dangers of trying to solve them in too linear or compartmentalised a fashion. I have to bear in mind whether this is a case in which the questions of 'meaning' and 'fact/opinion' might throw light on each other, such that it would be

wrong to tackle them in an order which proves to be a trap of false logic. I note the risk and seek to avoid it.

The material complained of

16. The material complained of relates to four programmes broadcast in July 2019. All of these programmes were covering (in some cases, amongst other things) the same high-profile political news story, which broke around that time in Pakistan. It was about a Pakistani judge, Judge Malik, who had tried, convicted and jailed former Prime Minister Nawaz Sharif on corruption charges. The latter's daughter, Maryam Nawaz, was now announcing the discovery of a video recording, which she was claiming showed Judge Malik 'confessing' he had been coerced into convicting her father. Judge Malik was himself subsequently dismissed on grounds of misconduct.
17. The first programme is called *Ikhtalafi Note*. It is a news and current affairs programme providing coverage and analysis of Pakistani political stories. It goes out on Fridays, Saturdays and Sundays with repeats during the week. The complaint concerns the edition broadcast on 6th July 2019. It is some of the rolling 'ticker' headlines, shown on-screen during coverage of the Judge Malik story, that are complained of (excerpts A and B).
18. The second programme was the 5pm news the same day. Two short passages of spoken footage are complained of (excerpts C and E), together with further 'ticker' headlines (excerpts D and F).
19. The third programme was the 2am news headlines the following day, 7th July 2019. A short passage of spoken footage is complained of (excerpt G).
20. The fourth programme was called *Think Tank*. It is a hosted current affairs talk show. Three passages of discussion are complained of (excerpts H-J) from the edition broadcast on 12th July 2019.
21. The excerpts complained of are set out in full, in an agreed English translation, at Annex A to this judgment.

My approach to viewing

22. I prepared myself to adopt the standard initial approach to the determination of 'natural and ordinary meaning' – namely to access the material complained of in context, but without yet knowing what either party wanted to say about its meaning, and to form and note some provisional views of my own about the meanings conveyed at a single viewing.
23. Before doing so, however, I re-read the judgment of Haddon-Cave J in *Shakil-Ur-Rahman v Ary Network Limited & Anor*. [2015] EWHC 2917 (QB), which not only summarises the authorities on the correct approach to viewing video for a 'meaning' trial, but also notes that, as in the present case:

“... because the TV programmes were entirely in Urdu, the Court cannot glean the meaning from simply watching recordings of the broadcasts. The Court is necessarily reliant on studying

translations of the transcripts of the broadcasts. To this extent, the Court is having to approach the task twice-removed, i.e. through the filter of the transcript and the translation. The Court does not have the benefit of gaining the immediate impression which the words spoken would have had on the hypothetical viewer in the original broadcast.” (paragraph 37)

24. I saw from his paragraph 38 how Haddon-Cave J dealt with the challenge of viewing foreign-language video. It is a real challenge. On the one hand it is important not to over-labour what is essentially an impressionistic exercise. On the other hand, there is an irreducible minimum of effort involved in the basic task of accessing content.
25. As a preliminary step, I looked at video samples of each programme, just to get an impression of the genre and structure of each, and some sense of style and tone. With that in mind, I next read the full transcript of each programme item, once through, in an agreed English translation, identifying the material complained of as I went along, and noting my initial impressions of its meaning. I then read the preliminary issues trial bundle and the parties’ written submissions. Finally, I watched the video programmes with the transcript and my notes to hand to confirm or adjust the impression I had formed as to meaning, in relation to each item.

The dispute

26. The dispute between the parties on the preliminary issues is a relatively narrow one. As to meaning, it turns largely on shades of imputation. Mr Mehmood asserts all the allegations made are allegations of fact, and at relatively high *Chase* levels of imputation. Dunya News maintains they should all be regarded as expressions of opinion; but it does not appear to dispute that all of them, even on the understandings for which it contends, are defamatory of Mr Mehmood at common law.

(a) The Ikhtalafi Note excerpts (excerpts A and B)

27. Mr Mehmood complains of the whole of these excerpts, but his pleaded ‘meaning’ relates to those parts specifically mentioning him (the remainder are *italicised* at Annex A). He says the natural and ordinary meaning of these ticker headlines is that he:

is a murderer and a drug dealer who has left Pakistan in order to avoid prosecution for criminal offences.

He says this is a ‘*Chase* level 1’ defamatory allegation of fact.

28. Dunya News says the headlines mean instead that Mr Mehmood:

is being investigated for being a murderer and a drug dealer who has left Pakistan in order to avoid prosecution for criminal offences.

It says this is an expression of opinion.

(b) The July 6th News Headlines excerpts (excerpts C to F)

29. Mr Mehmood's pleaded meaning for these excerpts, read together, is that:

he is a multiple murderer and leader of a criminal gang who has an important role in a drug-selling network and who has left Pakistan in order to avoid prosecution for criminal offences; and

there were reasonable grounds to suspect that he blackmailed the judge.

He says these are defamatory allegations of fact, at *Chase* level 1 and 2 respectively.

30. Dunya News's pleaded meaning for the same excerpts is that:

The Claimant is being investigated for being a multiple murderer and leader of a criminal gang who has left Pakistan in order to avoid prosecution for criminal offences;

he is being investigated for having an important role in a drug-selling network; and

it is possible that the Claimant bribed the judge.

It says these are expressions of opinion, not allegations of fact.

(c) The July 7th News Headlines extract (excerpt G)

31. Mr Mehmood derives the following natural and ordinary meaning for this passage as follows:

The Claimant is a multiple murderer and leader of a criminal gang who has an important role in a drug-selling network and who has left Pakistan in order to avoid prosecution for criminal offences; and

there were reasonable grounds to suspect that the Claimant blackmailed the judge

and, again, that these are defamatory allegations of fact at Chase level 1 and 2 respectively.

32. Dunya News says that this passage, understood as opinion not factual allegation, means:

The Claimant is being investigated for being a murderer and leader of a criminal gang and for having an important role in a drug-selling network and who has left Pakistan in order to avoid prosecution for criminal offences; and

it is possible that the Claimant bribed the judge.

(d) *The Think Tank excerpts (excerpts H to J)*

33. Mr Mehmood says that, considered cumulatively, these mean that he:

has engaged in blackmail, including blackmail involving sexual misconduct, to influence people, including judges.

He says this is a statement of fact, defamatory of him at common law.

34. Dunya News's pleaded (opinion) meaning is:

Assorted parties have used various tactics to try to influence judges, including on one occasion blackmail with a videotape of rape of children.

Consideration

35. I had no difficulty in orientating myself to the general news and current affairs context within which all the publications complained of occurred. The first three programmes contained news items – a fast-moving context of words and images featuring unmediated footage of events as well as journalistic summary and rolling headlines. So I have kept in mind, as guided, the perspective of an ordinary, reasonable viewer of broadcast news, coming across each item relating to Mr Mehmood in a programme including other stories. The fourth was a more measured discussion programme, reflecting on and analysing the previous week's news story along with illustrative images.

36. Although there are clearly common themes running through the material complained of, I have considered each programme separately, and have not aggregated meaning by looking from one to the other. An ordinary reasonable viewer would not have encountered the material as a connected collection in that way.

37. Where TV programmes are concerned, the focus must be on the *overall* impression given. The ordinary viewer has limited opportunity or motivation to replay or analyse relatively brief and fast-moving news items (*Skuse v Granada Television Ltd* [1996] EMLR 278, at 285-6) or items about news stories. The focus on overall impression makes it important to avoid the trap of literalism, especially, as *Shakil-Ur-Rahman* emphasises, when dealing with language in translation. Although the translation in this case is accepted for accuracy, its idiom is distinctive and a measure of distance from English idiom has to be allowed for.

38. Immediate context is important. As the parties have pleaded, I formed my impression of meaning *in relation to Mr Mehmood* in the immediate context of the Judge Malik video story in which the excerpts complained of appear. It was clearly a story of high political drama. Ms Maryam Nawaz held a news conference on 6th July at which she released the video 'confession' by the Judge that he had been coerced. She claimed it unveiled a shocking conspiracy, going to the heart of the country's institutions, which had put her father unjustly in prison; she demanded his vindication. A vehement and polarised reaction erupted, some in support of Ms Nawaz, others in turn accusing her

of lying, deceit and fabrication. Some were saying it was a revelation; others a sham of some sort, an illegal recording in its own right, or at least that its nature and reliability would have to be tested. The political temperature was high. The significance of the video was the issue at the eye of the storm.

39. Turning then to natural and ordinary meaning of what is said about Mr Mehmood in each programme, I bear in mind the perspective and common knowledge of an ordinary, reasonable viewer with sufficient background knowledge of and interest in Pakistan politics to follow the Judge Malik story and recognise the major players in it. I also remind myself that my task is not to choose between the rival meanings contended for by the parties, but, having formed some initial impressions about these items, to consider what the parties say about them, look at such context as appears to me to be proper, reasonable and relevant, and test my initial views, before doing what I am required to do by law: determine a single natural and ordinary meaning. I remind myself that the subject matter of the programmes is serious news and analysis, but at the same time fast-moving, consumed quickly and reacted to impressionistically and briefly.

(a) The Ikhtalafi Note excerpts (excerpts A and B)

40. The Judge Malik story is the lead item in this news and comment programme, and the tone is excited. But the connection between the ticker headlines complained of and the Judge Malik story does not yield itself immediately. A viewer would be instantly aware from the ‘ticker’ headlines that very serious allegations were being made about Nasir Butt (agreed by the parties to be a reference to Mr Mehmood) and attributed, as quotations, to named individuals. I later gathered that one of these individuals (Firdous Ashiq Awan) was special assistant to Prime Minister Imran Khan on information and broadcasting; and the other (Shahbaz Gill) was spokesperson for the Chief Minister of Punjab – both political opponents of Ms Nawaz. I accept that they and their perspectives would have been recognised as such by an ordinary reasonable viewer of this programme. Their quotations showed them to be sources hostile to Ms Nawaz’s ‘revelations’. Since excerpt A also identified Mr Butt as having been Prime Minister Nawaz Sharif’s bodyguard, and therefore close to him literally and figuratively, it would be quickly understood these sources were politically hostile to Mr Mehmood also.
41. But there are few other clues in the rest of this item – news footage and discussion with a series of contributors about the political and legal significance of the video – as to Mr Mehmood’s role in the Judge Malik story. There is a passing reference (after the tickers complained of have stopped rolling) to a conversation between the Judge and ‘Mr Nasir’. Much later, there is a reference to the potential importance of ‘the personal credibility of Nasir Butt Sahib, who is being talked about’. But these shed little light. What the words complained of mean, therefore, gains minimal further context for understanding what they say about Mr Mehmood. For the short time they are shown, they are simply quoted allegations from identified and hostile sources. No qualification of these allegations appears in the programme. They are bald repetitions, in headline form.
42. The allegations those sources make would have struck the viewer as essentially factual: that Mr Mehmood *was* ‘a killer’, ‘a drug dealer’ and ‘involved in murder and drug-related cases’. The sources quoted were saying these were things Mr Mehmood *had*

done. Mr Mehmood is also said to be ‘a fugitive’; in the immediate context of very serious allegations of involvement in criminal activity, that would naturally be understood to mean a fugitive from justice. I do not think his status as a fugitive from justice would be taken to qualify the allegations of his guilt in any way; on the contrary, it would be understood to add to the charges of illegal conduct being made against him.

43. Allegations of fact do not cease to be so just because they are made in a heated political context, or made vehemently, or attributed (without qualification) to third parties. What is quoted in extracts A and B is not regular political debate, however impassioned. It is unqualified imputation of serious criminal misconduct, repeated baldly without comment or reservation.
44. The natural and ordinary meaning I find for what these extracts say, in context, about Mr Mehmood is therefore that:

he is a killer and drug dealer, someone who has been involved in murder and drug-related cases;

he is a fugitive from justice; and

he is famous for this.

The first two paragraphs contain *Chase* level 1 factual allegations of the commission of illegal acts; the third is an expression of opinion. I am satisfied that all of these allegations relating to serious criminality are defamatory of Mr Mehmood at common law.

(b) The July 6th News Headlines excerpts (excerpts C to F)

45. The report opens with a clip of Ms Nawaz’s press conference. The backdrop behind her contains words (in Urdu and English) such as ‘corruption’ ‘kickback’ and ‘evidence’. It shows her claiming the video was evidence that Judge Malik himself said her father had been unfairly treated. She suggests this is based on what the video showed of a conversation between Judge Malik and Mr Mehmood, a picture of which is briefly shown. A reporter summarises this as being a claim that a secret video recording showed the Judge telling Mr Mehmood that he had treated Mr Nawaz Sharif unfairly.
46. There is then a clip of Firdous Ashiq Awan (the person quoted in excerpt A - Prime Minister Imran Khan’s information and broadcasting assistant) who had apparently called a news conference of her own. She appeared to be denouncing Ms Nawaz’s claims for the video. A journalist summarises or quotes her comments. What Ms Awan says and the journalist repeats at this point about Mr Mehmood is excerpt C; at the same time, brief video and still images of Mr Mehmood are intercut, and a rolling ticker gives the headline quotations (excerpt D).
47. Ms Awan’s rhetoric comes across as heated and emphatic – and indeed denunciatory. She was saying the video story was self-serving fabrication and an attack on the whole justice system. What she said – and the journalist and the ticker repeated without comment or qualification – about Mr Mehmood was equally denunciatory. She appeared to be saying he was a thoroughly disreputable character with a criminal past

(‘murderer, fugitive, leader of the miscreant gang’). Her point was that his role in the story and Ms Nawaz’s claims undermined their credibility. She also appeared to go on to suggest he may himself have brought about the Judge’s ‘confession’ in some way (‘it is possible that he took that traditional briefcase to buy that judge’s conscience’).

48. Some 15 minutes later, after another clip from Ms Nawaz’s press conference in which there is reference to a conversation between Judge Malik and ‘Nasir’, there is another summary or repetition of the same material from a journalist, and a rather longer piece of footage of Ms Awan’s press conference (excerpt E) – again intercut with images of Mr Mehmood and with ticker headlines (excerpt F). Here, Ms Awan expands on her denunciation of Mr Mehmood, giving further detail about his alleged criminal past, and further filling out her scenario of his role and motivations in the story of the Judge Malik video.
49. The clear impression a viewer gets is that in so far as the allegations about Mr Mehmood’s criminal past were concerned, these were plain allegations of fact – things he was being said to have done. However, in relation to Mr Mehmood’s role in the video story, and his potential motivations, the impression conveyed is that Ms Awan was suggesting a possible inference or deduction of her own about it rather than proposing a historical account. I formed that impression because this was a breaking news item; Ms Nawaz’s claims for the video were only just being made and Ms Awan was giving an immediate reaction, attacking them. Ms Awan’s references to Mr Mehmood seemed to be of two sorts – the ‘known’ factual claims about his past (so that his involvement in the video story was itself a ground to attack its credibility) and a theory, based on his past, about why he might have been involved in the video affair and up to no good. And these references were replicated by the journalist and the ticker without comment, distancing or qualification.
50. I have grouped all of this material together in considering its meaning. I thought the two sections (C/D and E/F) were close enough together that a reasonable viewer might have stayed with the programme long enough to see both. In any event they cover the same material – the second section at rather more length and detail.
51. What they seem to me to convey about Mr Mehmood to a reasonable viewer – their natural and ordinary meaning – is that:

he is a (multiple) murderer, who was leader of a criminal gang
and a key part of a drug-selling network;

he is a fugitive from justice;

he is infamous;

*his role in the Judge Malik video affair is disreputable; he could
have been trying to bribe the Judge.*

The first two paragraphs contain *Chase* level 1 factual allegations of the commission of illegal acts; the third and fourth are expressions of opinion. I am satisfied that the allegations of serious criminality, and the imputation that he could have been trying to bribe Judge Malik, are defamatory of Mr Mehmood at common law.

(c) The July 7th News Headlines extract (excerpt G)

52. This item on the Judge Malik video story a few hours later shows footage from Ms Nawaz's press conference and Ms Awan's press conference, intercut with video and still images of Mr Mehmood and a journalist's summary. They cover largely the same material as excerpts C and E, rather more briefly. My impression of their meaning was no different.
53. So the natural and ordinary meaning of excerpt G is also that:

Mr Mehmood is a (multiple) murderer, who was leader of a criminal gang and key part of a drug-selling network;

he is a fugitive from justice;

he is infamous;

his role in the Judge Malik video affair is disreputable; perhaps he was trying to bribe the Judge.

The first two paragraphs contain *Chase* level 1 factual allegations of the commission of illegal acts; the third and fourth are expressions of opinion. I am satisfied that the allegations of serious criminality, and the imputation that he could have been trying to bribe Judge Malik, are defamatory of Mr Mehmood at common law.

(d) The Think Tank excerpts (excerpts H to J)

54. This programme reflects on the Judge Malik video story some days after the breaking news of the previous week. A journalist hosts a panel of commentators, and the screen at the same time shows, beneath, video clips, still images and headlines to illustrate the discussion. The tone is conversational and ruminative. The excerpts complained of are three sections of comment from one of the guests, Mr Ayaz Amir, who comes across as a politically experienced commentator, perhaps a political veteran himself. Images of Mr Mehmood are shown below at the same time. The sections are separated by distances of between 10 and 15 minutes.
55. The programme opens with the host introducing her guests and updating the story. Judge Malik had been removed from his post. He had issued a statement making counter-allegations. Supreme Court proceedings were involved. The host turns first to Mr Amir. Mr Amir comments that the video story and Ms Nawaz's allegations had done her no good at all. He comments wryly that it all had a touch of Bollywood about it.
56. He then makes some references to a past event of blackmail using sexually explicit videos and the courage it takes to expose an experience of that sort. He makes a reference in this connection to 'characters like Nasir Butt'. Developing this theme, in extract H, he mentions the Sicilian mafia, and how, from the days of Al Capone to the present, various tactics are used by organised crime to influence judges. He mentions that there are some 'Butt Sahibs' who carry out those tactics on behalf of the organised crime bosses – in other words, do their dirty work.

57. Immediately before the second passage complained of, at extract I, the host seems to be suggesting that Judge Malik was now claiming he had been blackmailed in connection with the video released by Ms Nawaz, and that this had happened before he went to a place called Jati Umra. I accept that this would have been easily recognised by a reasonably politically-aware viewer of a programme of this sort as a reference to a well-known residence of the family of Mr Nawaz Sharif.
58. The passage complained of at extract H comes across as being jocular in tone. The host asks Mr Amir if he himself had ever been to Jati Umra, and he says he had, many times, in the course of a political career with its highs and lows. He laughs and says he wishes Nasir Butt (Mr Mehmood) had been there too, and ‘similar offers’ would then have been made to him. He ‘would not have shown so much reluctance’ as Judge Malik – he would have asked what they wanted him to do.
59. Later, another contributor had been discussing the Judge Malik video, and whether, if it had been made clandestinely, there would be forensic process around that, including to test its legality. The commentator observed that Ms Nawaz would have to prove its authenticity and ‘they would have to bring Butt Sahib from London’ if so. Ms Nawaz would have to prove it had been made in good faith, what the reasons were behind it, and whether blackmail had been committed or not.
60. The host turns back to Mr Amir, and more extended comment from him ensues (extract J). He talks about a scandal involving the rape of children in Kasur, and the videoing of that conduct, which had then been used for blackmail purposes, the perpetrators of the blackmail exploiting their victims again and again. He seems to be suggesting that Judge Malik was himself one such victim. He suggests Judge Malik had claimed he was being blackmailed with a sexually compromising video and had been at the mercy of his blackmailers for some time.
61. These three extracts are linked, to the extent that they are all about the theme of the blackmailing (or bribing) judges, including with sexually explicit material. Mr Mehmood is mentioned by name in the first two extracts, but not the third.
62. The impression given of the material *as a whole* is that the panellists were reflecting on the wider Judge Malik story, and in particular on the more recent suggestions of blackmail. But the part allocated *in the discussion* to Mr Mehmood himself is relatively minor. In extract H, Mr Amir was warming to his theme of blackmail as a familiar tactic of organised crime, describing the senior players (‘godfathers’) who orchestrated it and their henchmen who put it into practice. Mr Mehmood was mentioned (in the plural – ‘some Butt Sahibs’) as the sort of low-life who might be found in the latter category. In extract I, Mr Amir was again referring to him illustratively and jocularly; the joke is not completely easy to follow but I understood it to be along the lines of *if (the likes of) Mr Mehmood had propositioned me, then I would have...* Extract J creates quite a different impression; it seems to be referring to a well-known historic sexual blackmail scandal, involving many persons, and to be making a wholly serious suggestion that this episode had also involved Judge Malik and was the explanation for some of his actions. Mr Amir did not make a verbal connection between this and Mr Mehmood at all.
63. The viewer would, however, notice that *images* of Mr Mehmood accompanied all three extracts. The format of this programme was complex. Its main business was a panel

discussion, the panel shown interacting across the top of the screen. A constant succession of images was shown underneath. I thought the focus remained, however, very much on the discussion and interplay between the panellists; that was what would have held the viewer's attention, with the images literally relegated to a footnote. Images are, however, undeniably impactful. I thought the images of Mr Mehmood would have made a connection in the mind of the reasonable viewer between him and what Mr Amir was talking about at the time, even (or especially) when he had not been personally mentioned. But I did not think they would be absorbed as more than fleeting illustrations of the discussion, the main focus of which was not on Mr Mehmood, but on Judge Malik and the wider political implications of the affair.

64. I bore in mind that this was very definitely an exchange of conversational analysis and personal opinion about the affair. The representative viewer would understand Mr Amir was making factual allegations about the connection between Judge Malik and the Kasur blackmail affair. But I did not think the viewer would understand him to be making factual allegations about *Mr Mehmood's* connection with that affair or with other acts of blackmail. The viewer would certainly get the impression he was tarnishing Mr Mehmood by association with the emergence of blackmail into the Judge Malik story, and doing so rather dismissively, as if to say it was no surprise to find someone like him and blackmail mentioned in the same breath. I also thought the programme's deployment of accompanying images would enhance that association. But I did not understand it to go any further. Mr Mehmood came across as no more than illustrative colour to the story.
65. I have no doubt that Mr Mehmood, seeing himself portrayed visually in connection with this material, would have experienced that connection intensely personally. But I must avoid the trap that, simply because these items are featuring in his defamation action, I might tend to focus more on that connection and read more into it than the reasonable viewer at the time would have done. I keep that in mind.
66. I arrive in all these circumstances at the following natural and ordinary meaning of excerpts H-J:

Mr Mehmood is the sort of disreputable character who would be used by organised crime bosses to carry out their blackmail enterprises, including of judges. He could easily be imagined doing so, both generally and in the present case.

I consider this to be an expression of opinion. Its imputation of criminal associations and propensity are clearly defamatory of him at common law.

Conclusions

67. The natural and ordinary meaning of the publications complained of, and whether in that meaning they are allegations of fact or expressions of opinion, are set out at paragraphs 44, 51, 53 and 66 above.
68. I have noted that the parties do not appear to dispute that the publications complained of are defamatory of Mr Mehmood at common law. I am satisfied that they are.

Annex A

Excerpt A (Ikhtalafi Note 6th July 2019) news tickers at 03:00-05:56 GMT

Firdous Ashiq Awan: I condemn Maryam Safdar's press conference.

Firdous Ashiq Awan: Maryam Nawaz tried to mislead the nation.

Firdous Ashiq Awan: Maryam Safdar made unsuccessful attempt to draw sympathy.

Firdous Ashiq: This video is an attempt to save the N-League sinking ship.

Firdous Ashiq Awan: The leader of the audio tape tampering gang is in jail.

Firdous Ashiq Awan: This sort of video recording is illegal.

Lahore, Firdous Ashiq Awan: A forensic audit of the video will be carried out.

Firdous Ashiq Awan: Nasir Butt is a famous killer, fugitive, drug dealer.

Firdous Ashiq Awan: Nasir Butt was Nawaz Sharif's bodyguard in London.

Excerpt B (Ikhtalafi Note 6th July 2019) news tickers at 05:56-09:24 GMT

Shahbaz Gill: Maryam Nawaz lied at press conference today

Shahbaz Gill: Something designed to mislead comes out every day.

Punjab Chief Minister's spokesperson: They even attacked the courts...

Shahbaz Gill: Nasir Butt was involved in murder and drug-related cases...

Punjab Chief Minister's spokesperson: Maryam Nawaz is sentenced by the court.

Excerpt C (News Headlines 6th July 2019) at 17:00-17.03 GMT

Male Reporter: Fabricated story designed to put pressure on video institutions. A conspiracy to mislead the public. Attacks on institutions are underway. Forensic audit announced. Maryam Safdar has not just raised fingers at one judge, but the entire judiciary. Institutions were

pressurised to serve personal interests. Nasir Butt murderer, fugitive, leader of the miscreant gang. It's possible he took the briefcase to buy the judge's conscience. Firdous Ashiq Awan.

Firdous Ashiq Awan: Nasir Butt murderer, fugitive, leader of the miscreant gang. Important individual in the drug-selling network. This very same Nasir Butt, it is possible that he took that traditional briefcase to buy that judge's conscience

Excerpt D (*News Headlines 6th July 2019*) news tickers at 17:00-17.03 GMT

"Judge told Nasir Butt to tell Nawaz Sharif that he is innocent" [repeated twice]

Nasir Butt murderer, fugitive, leader of the miscreant gang

It is possible he took the briefcase to buy the judge's conscience – Firdous Ashiq Awan

Excerpt E (*News Headlines 6th July 2019*) at 17:18-17.21 GMT

Male Anchor: Firdous Ashiq Awan said in her response to Maryam Nawaz, that the revealed video was actually a way to pressurise institutions through a fabricated story. This is a conspiracy to mislead the nation and an attack on the institutions. A forensic audit must be conducted to find out the truth behind this story. In a press conference, the Special Assistant for Information said that Maryam Safdar has not just pointed fingers at a judge but the entire judiciary. She has pressurised institutions for her own personal interests. She further stated that, "Nasir Butt is a murderer, fugitive and the leader of the hooligan gang. It is possible that he brought that briefcase with him to buy the judge's conscience".

Firdous Ashiq Awan: Without consideration of a person's privacy, without consent, to tape that conversation itself is a criminal offense. A forensic audit of the audio and video will take place. Suicide attacks are being carried out to weaken institutions. Pressuring the officials of institutions. To fabricate these false and baseless stories and announce them. You have not just pointed fingers at one judge, but Pakistan's entire judiciary. You have undermined the credibility of justice-delivering institutions for your own selfish interests. Nasir Butt. He is an infamous murderer, a fugitive, and the leader of the hooligan gang. He is an important member of the drug-dealing network, who after murdering five people, escaped to England, UK, London to avoid the 302 case. In London, he performs his duties as the personal bodyguard of 'his majesty, the shadow of God'. He records this tape, and the way he presents it to the princess, was as if to say, "you can get some media mileage out of this. Use this to as a new tactic to mislead the nation". This same Nasir Butt, it is possible that he took your customary briefcase to the judge and tried to buy his conscience. And when he did not do as Nasir wished, then you propelled this baseless propaganda, in an attempt to stain the reputation of an honourable institution. We condemn this act. We are not the ones who brought Justice Qayoom's tape to the market.

Excerpt F (*News Headlines 6th July 2019*) at 17:18-17.21 GMT

Nasir Butt is a murderer, fugitive and the leader of the hooligan gang – Firdous Ashiq Awan.

Excerpt G (*News Headlines 7th July 2019*) at 03.35-07.00 GMT

Male Anchor: “The video is an attack on institutions. A forensic audit will take place. Maryam Safdar has pointed fingers at the entire judiciary. She has pressurised institutions for her own personal interests. It is possible that he brought that briefcase with him to buy the judge’s conscience.” Firdous Ashiq Awan.

Firdous Ashiq Awan: Nasir Butt. Murderer, fugitive, leader of the hooligan gang. An important member of the drug-dealing network. This same Nasir Butt, it is possible that he took your customary briefcase to the judge and tried to buy his conscience. Mr. Shahbaz Sharif is sitting helplessly next to his niece, looking like a gambler who just lost. A coup has taken place in PML-N. The portrait of a helpless Shahbaz Sharif, witnessed by the entire nation. He looked as if he were a prisoner of his own conscience.

Excerpt H (*Think Tank 12th July 2019*)

Ayaz Amir: And how the Sicilian Mafia operates? He had only portrayed a scene, but [in this case] it is a matter of one step further from the mafia. From America’s El Kapoor till date, various tactics have been used to influence the judges. And there are also some Butt Sahibs, some Janjuas there who carry out such tasks. And there’s an El Kapoor sitting behind.

Excerpt I (*Think Tank 12th July 2019*)

Ayaz Amir: I wish Nasir Butt would have been with me there. I wish it him and me there and similar offers would have been made to me as well.

Syeda Ayesha Naaz: *You would have not shown so much reluctance?*

Ayaz Amir: I would have not shown so much reluctance, the way Judge Malik did. I would have told them straight to deal with me and tell me what do you want from me. Here one thing must be made very clear the Chief Justice has not taken notice himself.’

Excerpt J (*Think Tank 12th July 2019*)

Ayaz Amir: The cases were in the court of honourable Muhammad Bashir Sahib. Mian Nawaz Sharif, his lawyers, expressed no trust in him that he was made to bring decision against them, therefore we have no expectation of justice from him. This Arshad Malik had come from there, he was brought there. He himself has narrated all the story that what Jillani had said and what so and so person said, and that we have had appointed you so we have expectations of you. All this is important in its context. But I am astonished at one thing. You must have... there was the Kasur scandal, rape scandal of children. There is another one also. When such an incident takes place, you make a video and whosoever is found in the tape falls in your grip. You don't exploit them once but again and again.

...

They exploit them for months and years and they could not utter even a single word against them because they are in the grip and they are terrified. They are scared. It was done to the Judge. That is an old tape. We are saying why he has been hiding for six days. And why he was not telling about it? He himself is saying that it was related to something to do with morality and immoral. He was in some compromising position. He is admitting it, it is a matter of great courage what the judge has done. And those people are finding faults in it. When you are in possession of such material, you make a telephone call and say: 'Mr Malik, you come over here, you go over there. We are going there, you come over there.' Malik Sahib is getting scared. If that is about me, I will be afraid of it. I would wish no such thing happen my whole life. I will wish so. If there is a video about me. If someone uploads it and puts it on YouTube, puts it on the social media. Here we have such a society that one may start trembling with fear at a small issue.

...

Here it is considered more sensitive. If any such things happen there, perhaps those might not be taken so seriously there. In this society, a judge, who is married, who has a family, about him they would be doing so. They attempted to blackmail him. He was in their clutches. Those who say, "Why he used to meet him." The one who has a tape in his possession says that we are coming to your house; can he say no to them? He must have been fearful, how he would have spent his life? How he would have spent those days? When you are being blackmailed, those boys of Kasur, who had been molested, see how they were exploited? They had tried to do it here. It will be determined later on whether criminal intimidation was committed there. I mean terrifying and blackmailing took place there. if proven; they could lead to offences of criminal cases.