Neutral Citation Number: [2021] EWHC 3363 (QB)

Case No: QB-2019-000261

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/12/2021

Before :

The Honourable Mrs Justice Collins Rice

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Between :

MR AMRIK SINGH SAHOTA **Claimant**

- and -

(1) MIDDLESEX BROADCASTING CORPORATION LIMITED
(2) JASWANT SINGH BHARJ (aka THEKEDAR)
(3) PARMINDER SINGH BAL **Defendants**

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Mr David Mitchell (instructed by Sydney Mitchell Solicitors LLP) for the **Claimant**
The **Defendants** did not appear and were not represented

Hearing date: 1st December 2021

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Approved Judgment

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 2pm on the 10th December 2021.

The Honourable Mrs Justice Collins Rice:

Introduction

1. Mr Sahota OBE, the Claimant, is a successful businessman and prominent member of the British Asian community in the West Midlands. He has a national and international leadership profile in Sikhism. He advocates the cause of Khalistan: the political project of an independent self-determining state for Sikhs in the Punjab.

2. This is Mr Sahota's claim in libel. It relates to a TV programme called Gurdwara Miri Piri, a Punjabi-language news and current affairs series, broadcast weekly in hour-long episodes on Midlands Asian Television National (MATV). MATV is operated by the Middlesex Broadcasting Corporation Limited, the First Defendant.

3. The claim concerns an episode broadcast on 29th January 2018. This was a live discussion presented by Mr Thekedar, the Second Defendant, in conversation with Mr Bal, the Third Defendant, together with a phone-in. It focused on a protest outside the Indian High Commission on 26th January, which Mr Sahota had attended.

Litigation History

4. Mr Sahota's claim was issued in January 2019. It has a complex procedural history, in which the Defendants' arrangements for legal representation play a part. A determination of preliminary issues was made by Steyn J, on the papers, in March 2021 (*Sahota v Middlesex Broadcasting & Ors [2021] EWHC 504 (QB)*). While noting the Defendants intended to reserve their position on whether the material complained of referred to Mr Sahota, she held that the programme contained three statements which were defamatory at common law and which, in their ordinary and natural meaning, meant this:

> (i) By his protest, the Claimant deceived and misled people.
>
> (ii) The Claimant is not a true supporter of the independence of Khalistan, as he purports to be: he is a hireling whose allegiance can and has been bought. When he ran a television station, he failed to support the Khalistani cause but now he does so because he is in the pay of Lord Ahmed.
>
> (iii) The Claimant, by standing with Kashmiri terrorists in London, showed his ignorance of history and the rights of Sikhs, and risked, if he did not stop, dividing the Sikh community and involving Sikhs in violence, hatred and terrorism.

5. Steyn J held the underlined parts of these statements to be expressions of opinion, but otherwise they were statements of fact. The expressions of opinion, at least in general terms, indicated the basis of the opinion. All of the statements were made by both Mr Thekedar and Mr Bal.

6. The case was listed for a three-day trial of all remaining issues on 1st-3rd December 2021. The dates had been fixed in July to accommodate the Defendants' legal representatives. The principal issues for trial were the Defendants' proposed defences of (a) the truth of the statements of fact (Defamation Act 2013, section 2) and (b) honest opinion (section 3 of the Act); the Claimant's case on serious harm (section 1 of the Act); and remedies including quantum of damages.

7. On 18th November 2021, the Defendants indicated they had de-instructed their solicitors and sought the Claimant's agreement to adjourn the trial. The Claimant did not agree, and on 24th November the Defendants confirmed to the Court that they would not after all be making any formal application for an adjournment. It appeared they were minded to proceed as litigants in person, but in due course they indicated they would be seeking to be represented at trial by Counsel on a direct access basis.

8. On the afternoon of 30th November, the day before trial, Counsel instructed by the Defendants made an informal approach to the Court asking for the trial dates to be vacated and the trial to be adjourned. He indicated that he had limited instructions from the Defendants, but they were to the effect that the Defendants needed more time to understand the materials in the trial bundle. The Claimant objected strongly to this proposed course.

9. In these circumstances, I held a short hearing by Teams on the evening of 30th November, on an urgent basis, at which both sides were represented by Counsel. No formal application or witness statement was produced. Counsel for the Defendants reiterated that his clients wanted more time to understand the trial bundle. I asked him if he could clarify why, with the benefit of Steyn J's determination of preliminary issues in March, a series of amended pleadings and case management directions thereafter, a trial date fixed since July and confirmation as recently as 24th November that no adjournment would be sought, his clients were in any timing difficulties over understanding the materials in the trial bundle. He was unable to assist. I declined in these circumstances to adjourn the trial.

Trial procedure

10. At the opening of the trial on 1st December, Counsel for the Defendants indicated he was instructed to renew his application for an adjournment, on the grounds that the Defendants 'needed more time' to engage with the trial bundle. He indicated that the Defendants did not propose to attend the trial or give evidence if the application was refused. He confirmed he had no further instructions.

11. Again, I asked for an explanation of *why* more time was needed, since it was not obvious in context, and of what disadvantage or prejudice it was said the Defendants were in jeopardy if the trial proceeded as listed. No further explanation was offered.

12. 'Needing more time' adds nothing to a bare request for delay if no explanation of the need is forthcoming. I concluded that I had not in these circumstances been given any good reason for adjourning the trial, and that it would be unfair to the Claimant and to the witnesses attending to do so.

13. In these circumstances, I rose to give Counsel for the Defendants an opportunity to take further instruction on whether the claim was still being defended and, if so, to

obtain a basis to enable him to defend it without the Defendants' attendance as witnesses if that was their decision.

14. Counsel returned in due course to say he was instructed to ask again for an adjournment. He told me both the individual Defendants were unwell, one with the effects of a recent covid jab and the other with a high temperature. No evidence was offered. When asked, he told me they were too ill to instruct him in any detail, but that he was instructed that the claim was to be defended. In the circumstances he would not be in a position to make submissions or cross-examine, but if the trial proceeded he would maintain the Defendants' presence in an observational capacity.

15. I confirmed that in all the circumstances I was unable to give real weight to these inexplicably late and unsubstantiated assertions of indisposition, and that there would be no adjournment. I also rose a second time, to give Counsel a further opportunity to reflect on whether the claim was being defended in practice as opposed to theory, and whether his proposed course of conduct was consistent with the Defendants' own best interests (and his professional obligations), and if necessary to obtain further instructions.

16. He returned after an interval of some 45 minutes to confirm that he had been de-instructed with immediate effect. I directed myself to my discretion under CPR 39.1. Proceeding to trial in the absence of a party is an exceptional step. In the circumstances, however, I could not but be satisfied that the Defendants' failure to attend trial (whether in person or through Counsel), and failure to engage in a meaningful way with the trial process, was a deliberate step for which no good reason had been provided or was discernible, and which had at least the appearance of being oppressive to the Claimant.

17. I concluded in these circumstances that the interests of justice, and considerations of the proper use of court time, justified proceeding to trial in the Defendants' absence. I reminded myself (and Counsel for the Defendants) of the provision made at CPR 39.3(3) and (5) for a defendant to seek relief on the basis that there was after all a better reason for not attending trial than had been put before me. I also bore in mind that this is a long-delayed trial of a claim in which the Claimant's principal objective is vindication; that vindication delayed is vindication denied; and that appreciable responsibility for the delay (including the late trial date itself) could fairly be laid at the Defendants' door. I also bore in mind that in a defamation trial Defendants' fundamental rights to freedom of expression are in issue, and that in proceeding in their absence it was incumbent on me to subject the Claimant's case to a corresponding degree of anxious scrutiny.

18. I directed myself to paragraph 2 of Practice Direction 39A, which makes further provision for trials conducted in the absence of a defendant. It confirms that a claimant may 'proceed to prove his claim at trial' and obtain judgment on his claim and for costs. The Claimant must, in other words, be put to proof of his case. The Claimant and his two witnesses were sworn as to their witness statements and were made available in the witness box for questioning.

19. CPR 39.3(1)(c) provides that if a defendant does not attend trial, the Court may strike out his defence. I was invited to do so, on the basis that this is a jurisdiction which arises not on a merits assessment, but simply by way of confirmation that the claim is

not being *actively* defended in accordance with the rules and procedures of court. That was the view I had formed for the reasons already set out, and I ordered the Defendants' defence to stand struck out. Paragraph 2 of Practice Direction 39A confirms that where the court has struck out proceedings, or any part of them, on the failure of a party to attend, that party may apply in accordance with Part 23 of the CPR for the proceedings, or that part of them, to be restored and for any judgment given against that party to be set aside.

20. The consequence of striking out the Defendants' defence was that the issues of the truth of the factual defamatory statements, and the defensibility of the statements of opinion, as to which a defendant bears the burden of proof, did not need to be addressed by the Claimant. He was, however, required to satisfy the Court as to the outstanding components of the Defendants' liability, as to which the burden of proof was on him, in order to succeed on his claim.

Determination of liability

(a) 'Reference'

21. Steyn J had noted in her judgment that the Defendants were formally reserving their position on whether the programme sufficiently identified the Claimant as the subject of the defamatory statements. His surname was referred to on several occasions in the discussion, and a mention was made of a TV channel he had owned. Some facts about his father were also referred to. The Defendants' pleadings appear to assume that the programme was about him. It is the evidence of their witness statements that the programme discussed his attendance at the protest. I could see no sign in the materials before me that, although Mr Sahota's surname is not rare, reasonable people watching the programme would have understood it to refer to anyone else. I could see no potential argument of any merit that there was sufficient doubt about this issue for it to be capable of determining liability. I was in all the circumstances satisfied that the programme referred to the Claimant.

(b) Publication

22. It appears that the First Defendant intended to put the Claimant to proof that it was responsible for the publication of the defamatory statements. There can be no doubt it was responsible for the publication of the programme. It appears that it intended to rely on the defence at section 1(3)(d) of the Defamation Act 1996 to distance itself from what was said by the individual Defendants. However, that is a defence that relies on showing that a defendant took reasonable care in relation to publication and neither knew nor had reason to believe that what it did caused or contributed to the publication of a defamatory statement. Since it appears from the evidence before me that the Fist Defendant *continues* to publish the programme online on the MATV Youtube channel, and bearing in mind the ruling of Steyn J in relation to the individual Defendants, I am satisfied that all three Defendants were responsible for the publication in question.

(c) Serious Harm

23. Section 1 of the Defamation Act 2013 provides that '*a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation*

of the claimant'. This is a test which must be satisfied on the balance of probabilities in relation to each defamatory statement.

24. I have directed myself to the guidance given by the Supreme Court in *Lachaux v Independent Print Ltd [2019] UKSC 27* on how to apply this test. It does not require specific instances of harm to be evidenced. It is based on inferences of fact from a combination of the meaning of the words (as established by Steyn J), the situation of Mr Sahota, the circumstances of publication and the inherent probabilities, to arrive at a conclusion about which precision is not expected. Relevant factors may include: the scale of publication; whether the statements have come to the attention of at least one identifiable person in the UK who knew Mr Sahota; whether they were likely to have come to the attention of others who either knew him or would come to know him in the future; and the gravity of the statements themselves.

25. As to meaning, and the inherent gravity of the allegations, I must not go beyond the meanings determined by Steyn J, but it is right to understand them in context. The first statement is an accusation that Mr Sahota's act of ostensibly pro-Sikh and pro-Khalistan community and political activism in being present at the demonstration was in fact a misleading deceit. The second statement alleges that his pro-Khalistan stance in general is untrue: he has no true allegiances at all and his apparent activism is the product of a Muslim paymaster with other agendas. The third statement identifies him as 'standing with Kashmiri terrorists' at the protest, and not only ignorant of the rights and traditions of Sikh people, but risking future damage to the Sikh community and exposing it to violence, hatred and terrorism.

26. These are meanings of inherent gravity. They allege systematic and public hypocrisy, unprincipled misuse of a public profile, and ignorance and betrayal of his heritage up to and including the point of exposing his community to danger. They go to the heart of Mr Sahota's personal integrity, his public reputation and his lifetime's achievements.

27. It is Mr Sahota's public profile which throws these allegations into particularly sharp relief. I accept the evidence of the materials before me that he is regarded as a leader and role-model in the British Asian community, on account of his business success, public philanthropy, personal probity, and visible commitment to the causes of peaceful and democratic political engagement and community wellbeing and prosperity. I accept that it was on this account that he was honoured by Her Majesty with an OBE and on occasion welcomed and recognised by former Prime Ministers and other leaders of national stature. I also accept the evidence that his public conduct in turn proceeds from a profound commitment to his Sikh heritage and sincere personal devotion and practice within the Sikh religion, as well as his passionate belief in the Khalistan cause.

28. As to scale of publication, no viewing figures appear to have been provided in relation to the original broadcast. A modest 82 views are recorded on the Youtube channel over a period of almost four years. On the other hand, MATV's homepage says things like this:

> As one of the oldest Asians channels in Europe its viewership is very wide and entire Europe from Norway to Turkey watches MATV.

> …
>
> Following are the salient features of MATV Channel
>
> 1. It is a satellite Channel operating on BskyB platform in UK & Europe.
>
> 2. It is available free to air to all satellite homes in Europe.
>
> 3. It is a community channel for Asians outside Asia.
>
> 4. MATV Channel does maximum live shows in Europe.
>
> 5. MATV has maximum programming for all communities.
>
> 6. MATV does programming on all issues which affect Asians in Europe.
>
> 7. MATV is trying to fill the void for Indians living away from India.
>
> … In short, MATV Channel is the choice for Indians in Europe.

Even allowing for a degree of hyperbole in this, I can take into account that MATV broadcasts nationally and internationally and is pitched to appeal broadly to the wider Asian community. It is a reputable broadcaster of edited news and current affairs content and likely to be regarded as authoritative by viewers. The defamatory statements were themselves repeated over the course of a serious current affairs programme lasting an hour.

29. The programme was broadcast in Punjabi. Publicly available information suggests that there are approaching a million and a half British Indians; and that the population of Punjabi speakers in the UK, and the number of Sikhs in the UK, are in the mid-range hundreds of thousands. Only a small proportion of that number would need to have watched the programme when it was first broadcast for viewing figures to reach the thousands or possibly more. Then there is always the 'grapevine' effect of word-of-mouth onward transmission especially via social media (in the memorable imagery of *Slipper v BBC [1991] 1 QB 283 (CA)*, defamatory publication has a tendency seep out and poison underground springs of rumour).

30. I accept the evidence before me that witnesses who knew Mr Sahota watched the programme or viewed it online subsequently and, while from their personal knowledge they did not believe the defamatory statements, they were shocked and angered by them and strongly concerned about the impact the programme would have on people who did not know the Claimant personally. The witnesses testify to a dozen or more others at the local Gurdwara mentioning the programme to them personally with considerable concern. Mr Sahota confirms that he was himself approached directly on the subject by friends and acquaintances.

31. Taking all of these circumstances together, I am satisfied that the Claimant has established that each of the defamatory statements has caused or is likely to cause serious harm to his reputation.

(d) Conclusion

32. Although it has inevitably not been tested in the way it would otherwise have been, I was satisfied that the evidence of these matters given by and on behalf of the Claimant was credible and compelling. I am satisfied therefore that the Claimant has established his claim as to liability. He is entitled to remedies providing a fair vindication of his rights.

Remedies

(a) Quantum of damages

33. Mr Sahota makes no claim for special damages (financial losses): this is a claim for general damages only. The broad principles to be applied to the assessment of general damages in defamation cases are well established. I have been directed to the guidance from the decided authorities, including *Barron v Vines [2016] EWHC 1226 (QB)* at paragraphs 20-21.

34. The purpose of an award of damages in defamation proceedings is to compensate for injury to reputation and to feelings, so far as money is able to do that. The court takes account of the gravity of the defamation, the extent of its publication, and evidence of the harm it has done. The sum awarded must be an outward and visible sign of vindication, sending a message restoring a claimant's good name 'sufficient to convince a bystander of the baselessness of the charge'.

35. The overall calculation of compensatory damages in defamation cases has to be undertaken in a broad and holistic way, much as juries used to do, taking all of these relevant considerations into account. Regard may be had to the (very differently assessed) awards in personal injury cases to ensure that damages for defamation are, and are seen to be, proportionate. Regard may also be had to other awards in defamation cases of a comparable nature, for similar purposes. The conduct of a defendant may also, on general principles, be capable of having an impact one way or the other on the overall award of general damages.

36. I have found that the defamatory statements contained allegations of some gravity. That is a factor which I must regard as important. I have found them to have had a publication spread at noticeable national level, and to have made an appreciable impact among his immediate acquaintance. There is little positive evidence of grapevine dissemination, but that is both always an endemic risk and not always easy to establish.

37. I have no difficulty in accepting Mr Sahota's evidence of the extent of the personal distress caused to him by these statements. His public standing and reputation is highly valued by him; he has invested great energy and commitment in his community, public and charitable work, and is rightly proud of the recognition he has received. He testified movingly as to the direct impact the defamation, and his struggle for vindication, has had on his wellbeing and that of his family, his wife in

particular. He and his family have struggled with and suffered from this affair to a real degree over the years. He is entitled to fair compensation for that, for the humiliation of wondering what others must have thought of him, and for the negative reputational effects attending the spread of the defamation to the degree I have found probable.

38. There has been no suggestion that anyone in Mr Sahota's own circle was tempted to believe the allegations or to think them other than malicious. Mr Sahota is entitled to draw some comfort from that, and indeed from the strength of his reputation to withstand an attack like this more generally. There is indeed no evidence that anyone at all has believed the allegations, thought the worse of Mr Sahota or changed their behaviour towards him on account of what was said about him. But even a modest impact beyond those who know someone can give a rumour currency, including among those less well placed or motivated to dismiss it.

39. I take into account that the original programme was evidently planned around the topic of Mr Sahota's reputation to an appreciable extent. It was broadcast without giving Mr Sahota notice, or any opportunity to correct factual matters or put his side of the story beforehand, and without any right of reply. No good reason appears for that. I take into account also that publication in this case has been continuing. Mr Sahota has never received a retraction or apology. The Defendants' defences have neither been withdrawn nor substantiated.

40. My attention was drawn to a number of quantum awards in cases which share with the present case the feature that the defamation made a link of some sort to terrorism or terrorists (*Ghannouchi v Al Arabiya unreported 8th November 2007*; *Al Amoudi v Kifle [2011] EWHC 2017 (QB)*; *Harrath v Stand for Peace [2017] EWHC 653 (QB)*; *Zahawi v Press TV [2017] EWHC 1010 (QB)*). The authorities have always been unanimous that any allegation of terrorism is to be regarded as extremely serious and highly damaging, and that has been recognised in awards of general damages well into six figures.

41. I have looked at these cases. I have also reflected on the precise nature of the meaning Steyn J attributed to the third libel in this case. To the extent to which it contains opinion, that opinion is unspecific and alludes to terrorism only by way of warning about the risks *from others* created by Mr Sahota's conduct should he persist in it. To the extent that it contains an allegation of fact, that was that he was 'standing with Kashmiri terrorists in London'. In the context of a protest gathering, that may be understood perfectly literally. I accept that the imputation was that this was no accident - he was doing so knowingly or deliberately. On the other hand, put at its highest, this is an allegation of sharing a platform or being a fellow-traveller; it is not an allegation of, for example, participating in, financing or profiting from terrorism, much less of being a convicted terrorist. Nor is it a case in which it is suggested that Mr Sahota was put in fear of reprisals on account of allegations of terrorist or extremist links. The heart of the third allegation, as with the other two, seems to be hypocrisy, shamelessness and betrayal of his heritage – no less, but at the same time not of the order of complicity in terrorism of the cases to which I was taken.

42. Each case turns on its own facts. Adopting the approach I have indicated above, and taking account of all the factual matters I have identified, my conclusion is that the appropriate global award of general damages to compensate Mr Sahota for injury to

reputation and to feelings, to ensure adequate vindication in respect of these allegations, and to restore him in his community, is £60,000.

(b) Other remedies

43. Mr Sahota is undoubtedly entitled to the permanent injunctive relief he seeks to vindicate the rights he has established. The First Defendant must be required to remove the offending material from its website, and all the Defendants should be required not to publish the same or similar material defamatory of Mr Sahota in future.

44. My attention is drawn to section 12 of the Defamation Act 2013 and the power of the court to order a summary of its judgment to be published. This seems to me to be an appropriate case for the exercise of that power, so that Mr Sahota's vindication receives equal prominence with the libels. The 'judgment of the Court' in this case includes both this judgment and that of Steyn J on the preliminary issues. By section 12(2), the wording of such a summary and the time, manner, form and place of its publication are in the first instance for the parties to agree.