

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
Crl. Misc. No. 36448-H/2024
(Mst. Farzana Bibi vs. Capital City Police Officer, etc.)

JUDGMENT

Date of hearing:	13.06.2024
Petitioner by:	Malik M. Sajjad Nawaz, Advocate
State by:	Mr. Shahid Nawab Cheema AAG, Hafiz Asghar Ali and Mr. Muhammad Moeen Ali Deputy Prosecutors General with Dr. Usman Anwar, Provincial Police Officer, Zeeshan Asghar DIG (Investigation), Faisal Kamran DIG (Operation), Malik Awais, DIG (Legal), Abdul Hanan, S.P. (Operations) Civil Lines, Safdar SI, Touqeer SI, Javed SHO, Ali Jan Khan, Secretary S&ME, Dr. Muhammad Akhtar, M.S., Mian Munshi Hospital, Dr. Mansoor Mirza, Assistant Professor, Forensic Department KEMU, Lahore.
Respondents by:	M/s Asad Manzoor Butt, Qadir Bakhsh Chahal, Hafiz M. Nauman Zafar and Hafiz Sami ur Rehman, Advocates.

ALI ZIA BAJWA, J.:- Through this petition filed under Section 491 of the Criminal Procedure Code, 1898 (hereinafter ‘*the Code*’) the recovery of the alleged detenus, namely Shahzad and Asheek, has been sought. It has been asserted that the *detenus* are currently held in illegal and improper custody by the respondent, No.2/Station House Officer of Police Station Sundar, Lahore.

2. On 07.06.2024 respondent No.2, the Station House Officer of Police Station Sundar, Lahore, was directed to present the

detenus before the Court on the next scheduled hearing date. On that date of hearing, the learned law officer informed the Court that the *detenus* were killed in an alleged police encounter within the territorial jurisdiction of Police Station Lytton Road, Lahore. Consequently, FIR No. 1042/2024 has been registered under Sections 302, 353, 186, and 34 of the Pakistan Penal Code, read with Section 13-2(a) of the Punjab Arms Ordinance, 1965. The Deputy Inspectors General of Police, Operations and Investigation Wing, were summoned to appear with the complete case record. Shockingly, the records presented were incomplete, due process had not been followed, and mandatory procedures were bypassed. Such a dire and distressing state of affairs necessitated the summoning of the Provincial Police Officer and the Secretary Health, Government of Punjab.

3. Arguments heard; record perused.

4. In this case, the tragic loss of two young men in an alleged police encounter under suspicious circumstances has cast a long shadow over the entire chain of incidents. The mishandling of their bodies and the botched investigation have added fuel to the fire, making the entire affair appear highly dubious. It is as if the police authorities have opened a Pandora's box, allowing a cascade of doubts and mistrust to spill forth, tarnishing the credibility of the entire operation. The incident, shrouded in a fog of uncertainty, called for a thorough and transparent inquiry to clear the air and restore faith in the criminal justice system.

5. Extrajudicial killings are egregious violations of the fundamental rights enshrined in the Constitution of the Islamic Republic of Pakistan, 1973. These heinous acts flagrantly contravene the protections guaranteed under Articles 4, 9, 10, 10-A, and 14, which collectively uphold the sanctity of life, due process, and human dignity. Article 4 asserts the inalienable right of individuals to be

treated in accordance with the law, a principle utterly disregarded when law enforcement operates outside legal boundaries. Article 9 enshrines the right to life and liberty, rights that are irrevocably denied when individuals are unlawfully deprived of their lives. Article 10 ensures the right to a fair trial, a cornerstone of justice that is completely negated by summary executions. Article 10-A further reinforces the right to a fair trial and due process, underscoring the necessity of legal proceedings before any punitive measures can be taken. Article 14 guarantees the inviolability of the dignity of man, a dignity that is irreparably shattered by the brutal and arbitrary nature of extrajudicial killings. Extrajudicial killings not only breach these fundamental rights but also undermine the very essence of the rule of law, casting a shadow over the legitimacy and integrity of the State. To preserve the sanctity of the Constitution and the rights it guarantees, it is imperative to categorically condemn and eradicate such unlawful practices.

6. Extrajudicial killings are severe breaches of human rights and international law, involving the unlawful execution of individuals without due process, often carried out by law enforcement agencies. Key international laws addressing this issue include the Universal Declaration of Human Rights, 1948 (UDHR) and the International Covenant on Civil and Political Rights, 1966 (ICCPR). Article 3 of the UDHR and Article 6 of the ICCPR protect the right to life and prohibit arbitrary deprivation of life. The United Nations has established principles for preventing and investigating extrajudicial killings. These include the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions, 1989 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990. These legal instruments emphasize thorough, prompt, and impartial investigations and the necessity of proportional and last-resort use of force by law enforcement. The United Nations plays a crucial role in addressing extrajudicial killings

through mechanisms like the Special Rapporteur on extrajudicial, summary, or arbitrary executions, who investigates and reports on such violations. States are obligated to prevent, investigate, and punish extrajudicial killings and provide remedies to victims, ensuring compliance with international human rights standards.

7. The criminal justice system is designed to ensure that every individual, regardless of their alleged crimes, is entitled to a fair trial. This process is integral to upholding the rule of law, maintaining public confidence in justice, and protecting human rights. When police officers take the law into their own hands, they corrode this trust and subvert the criminal justice system. They assume the roles of judge, jury, and executioner, which is anathema to the principles of fair trial, governance and justice.

8. The assertion that police kill hardened and desperate criminals in encounters lacks any legal foundation and fundamentally challenges the credibility and effectiveness of the criminal justice system. Such an ill-founded rationale is not only legally indefensible but also morally reprehensible. By bypassing due process and resorting to extrajudicial killings, law enforcement undermines the very principles upon which a just society is built. Furthermore, this practice casts a long shadow of doubt over the integrity of law enforcement agencies. It suggests a lack of faith in the ability of criminal justice system to deliver justice and a preference for brute force over legal scrutiny. Such actions propagate a dangerous message that the State approves lawlessness among its enforcers. This not only perpetuates a cycle of violence but also breeds resentment and fear within the community.

9. The sacrifices of law enforcement agencies in safeguarding the lives of citizens are nothing short of highly commendable and invaluable. These valiant guardians stand as

sentinels at the gates, often paying the ultimate price to ensure our safety. Their blood becomes the ink with which the story of our security and safety is written. Their courage and valour play the role of a shield that deflects harm from our doors. Every drop of their blood spilled in the line of duty speaks volumes of their dedication and the profound cost of our peace. Their sacrifices create a sanctuary, allowing us to live our lives without fear. However, under the guise of self-defence, fake police encounters cannot be justified. These nefarious acts, though perpetrated by a small fraction, cast a long shadow over the honour and integrity of entire police department. Those who indulge in such nefarious activities must be rooted out with steadfast resolve.

10. The right of self-defence is a fundamental right bestowed upon both individuals and law enforcement alike. For the police, this right becomes a vital tool in the discharge of their duties, enabling them to protect not only their lives but also the lives of innocent civilians. In the realm of law enforcement, the right of self-defence is not merely a privilege but a necessity. Police officers frequently find themselves in perilous situations where split-second decisions can mean the difference between life and death. The law acknowledges this harsh reality, permitting the use of force to neutralize threats and ensure public safety. Yet, this power must be wielded with utmost responsibility and discernment and use of power must be proportionate to the threat faced.

11. The complex nature of self-defence can sometimes be overshadowed by the issue of fake police encounters, leading to significant ethical and legal challenges. Striking a balance between the legitimate right of self-defence and the prevention of fake encounters necessitates a balanced approach. A stringent oversight mechanism must be evolved within police department. Independent body in the spirit of The Torture and Custodial Death (Prevention and

Punishment) Act, 2022 should investigate the incidents where lethal force is used, ensuring that each case is meticulously scrutinized and that any misuse of power is promptly addressed. Legal framework should be fortified to delineate clear boundaries for the use of force. It is a settled law that the right of self-defence is contingent upon the presence of an immediate and credible threat. Any deviation from this standard should be met with severe repercussions, reinforcing the message that extrajudicial actions will not be tolerated.

12. Training is another cornerstone in this delicate balance. Police officers must be rigorously trained not only in tactical response but also in de-escalation techniques. Emphasizing the sanctity of life and the principles of proportionality and necessity can help prevent the knee-jerk resort to lethal force. Officers should be equipped to assess threats accurately and respond appropriately, minimizing the risk of excessive force. Transparency is also crucial. The public must be kept informed about the policies governing the use of force and the measures taken to investigate and rectify any abuses. Body cameras and other forms of surveillance can serve as impartial witnesses, providing clear evidence of the circumstances surrounding each encounter.

13. In conclusion, the right of self-defence and the scourge of fake police encounters present a complex interplay of duty and ethics. By developing oversight mechanism, enhancing training, ensuring transparency, reinforcing legal standards, and nurturing community relations, the fake police encounters can be prevented. This equilibrium safeguards the integrity of the criminal justice system, affirming that the law, though sometimes wielded in defence, is never a tool for extrajudicial retribution.

14. The Provincial Police Officer, upon his appearance before the Court, unequivocally asserted that the sanctioning of fake

police encounters is untenable, as such actions carry with them severe penal consequences. His written statement has also been entered into the record, reaffirming the assertions he made before the Court. A circular dated 12.06.2024 has also been placed on the record issued by the Central Police Office, Punjab, Lahore regarding the police encounters which has been reproduced hereinafter: -



**CENTRAL POLICE OFFICE,
PUNJAB, LAHORE.**

MOST IMMEDIATE

To,

1. **The Capital City Police Officer, Lahore.**
2. **All the Heads of District Police in Punjab.**

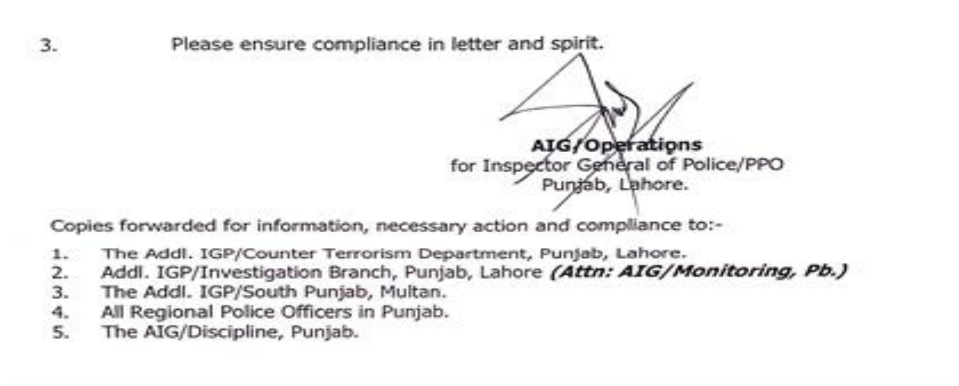
No. **4870/Ops**

Dated: **12/06/2024.**

Subject: **POLICE ENCOUNTERS.**

The following necessary instructions are hereby passed regarding use of force during the arrest of criminals and related operational police duties as per law for strict compliance:-

- i. If terrorist/outlaws/robbers/miscreants resort to firing on police, it has the right of private defence u/s 100 of PPC which states as under:-
"The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-
Firstly: Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
Secondly: Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault"
 - ii. No fake encounter is permitted under the law. Therefore, any instance of fake police encounter shall not be tolerated and strict legal action will be initiated.
 - iii. All the heads of district police shall send report to the AIG/Monitoring, Punjab regarding each police encounter that takes place in future in his district.
2. Hence, the competent authority has directed that excessive use of force must be avoided in this regard.



The prompt response of the Provincial Police Officer eloquently reflects his genuine intent to curb the abhorrent practice of fake police encounters. Through thoughtful reforms and steadfast vigilance, he strives to restore sanctity of the criminal justice system and public trust.

15. Learned counsel for the petitioner informed the Court that an application concerning the allegation of a fake police encounter has been submitted to the Federal Investigation Agency for further proceedings against the implicated police officials. It is anticipated that the Federal Investigation Agency will diligently complete the investigation under the supervision of National Commission for Human Rights within the stipulated time, adhering strictly to the provisions of The Torture and Custodial Death (Prevention and Punishment) Act, 2022. As a clear directive has been issued by the Provincial Police Officer, mandating zero tolerance for fake police encounters throughout the province, this Court hereby **disposes of** this petition with the expectation that the aforementioned circular shall be implemented in its true letter and spirit without fail.

(Ali Zia Bajwa)
Judge

Order was pronounced and written on 13.06.2024 and after completion it was signed on 14.06.2024.

Approved for Reporting

Judge

Judge