

Ahmad Bin Hj Othman

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Motion No. 10 of 2024)**

Haji Abdullah Soefri bin POKSM DSP Haji Abidin, JC
7th September 2024

*Criminal Law – Notice of Appeal for extension of grace period – Excise Order 2006 – Appeal
Dismissed*

Appellant/Defendant In Person and Unrepresented.
PO Nurul Husna Aqilah binti Haji Abidin for the Respondent/Public Prosecutor.

Cases cited:

Aisah binti Mohd Zaini v Public Prosecutor (HCCA No. 28 of 2011)
Sepinah binti Haji Sa'at (A2) v Public Prosecutor (HCCA No. 29 of 2011)
Awang Ibrahim bin Awang Besar v Public Prosecutor (HCCM No. 30 of 2020)

JUDGMENT

Hj Abdullah Soefri, JC:

Introduction

The Appellant/Defendant, hereafter known as the Appellant, was brought on 16th May 2024 before the Magistrate's Court and was charged with a single charge for an offence under Section 146(1)(d) of the Excise Order, 2006. The charge is as follows:

“That you, on the 22nd day of November 2022, at about 1152 hours, in the vicinity of a house addressed at No.11, Simpang 95, Jalan 60, Perpindahan Kg.Rimba, Gadong in Brunei Darussalam, did knowingly have in your possession unexcisable goods, to wit:

- 1) 5 cartons x 10 packets x 20 sticks of ERA Black Menthol cigarettes*
- 2) 20 packets x 20 sticks of ERA Black Menthol cigarettes*
- 3) 2 cartons x 10 packets x 20 sticks of ERA Full Flavor cigarettes*
- 4) 2 cartons x 10 packets x 20 sticks of ERA Premium cigarettes*

- 5) 19 packets x 20 sticks of ERA Premium cigarettes
- 6) 14 packets x 16 sticks of Win Mild Minti Ceta cigarettes
- 7) 15 packets x 16 sticks of L.A Ice cigarettes
- 8) 15 packets x 16 sticks of Grow Black Ice cigarettes

And you have thereby committed an offence under Section 146(1)(d) Excise Order 2006 and punishable under Section 146(1)(ia) of the same Order.

The Defendant pleaded guilty on the same day and admitted to the Statement of Facts. He was convicted and was sentenced to a fine of \$34,000 in default of 14 months imprisonment. He was given a grace period of 4 months to which he has to pay all of the fine until 16th September 2024. The Appellant now appeals to have his grace period extended in order for him to pay the fine imposed.

Appellant's Submission

The Appellant applied to pay the fine by monthly instalments for the following reasons:

- 1) He is 63 years old.
- 2) The grace period is too short.
- 3) His monthly income is only from his old age pension which is at \$250 per month. It is difficult for him to get money to pay the fine in one instalment.
- 4) He is suffering from various medical ailments that make it difficult for him to work.
- 5) He is supporting his 3 children and 3 grandchildren and his wife.
- 6) His children support him for food which is minimal.
- 7) He did apply for welfare assistance but has not received any reply that is positive.
- 8) He promised not to repeat this offence again and if he goes to jail, it will be an added burden to the family.

Respondent's Submission

The Excise duty evaded by the Defendant was \$1,546. The Respondent submitted that the sentence imposed which was \$34,000 in default of 14 months' imprisonment on the Defendant was proper and within range and not manifestly excessive as the fine was based on a multiplier of 22, which is leaning towards the lowest multiplier amount as stipulated by the law for any subsequent conviction. The Respondent further submitted that the in-default sentence of 14 months' imprisonment is proper based on the calculation provided by Section 132 of the Excise Order 2006.

The Respondent submits that the grace period of 4 months given to the Appellant to pay is an ample and sufficient period of time to settle the fine in full, taking into consideration that he is a repeat offender who clearly shows no remorse and that the Appellant received profits around \$200 to \$300 per month from selling the cigarettes.

It is further submitted that if the Defendant is granted a longer grace period, it would dilute the deterrence element of the sentence and would be an administrative burden to the Court.

The case of *Aisah binti Mohd Zaini v Public Prosecutor* (HCCA No. 28 of 2011) and *Sepinah binti Hj Sa'at* (HCCA No. 29 of 2011) where it was held that:

“... a lengthy period for the payment of a fine is undesirable. It can become psychologically oppressive for the offender to constantly have to (a) live under the threat of imprisonment being imposed at any time in default of payment of the fine, and (b) worry about finding the means to pay the fine. Recovery of the fine over a long period may also be administratively challenging.”

In the same case as cited above, the Court further held that *“a two-year period would seldom be too long and in an appropriate case, three years will be unassailable.”*

It was further submitted that if the Defendant was to pay off the remaining balance of the fine by using all his pension money, it will take him around 10 years to pay off the fine. It was further submitted that ill-health is not a factor to be considered. (*Awang Ibrahim bin Awang Besar v Public Prosecutor* [HCCM No. 30 of 2020])

Magistrate Decision

The Magistrate in his sentence has taken into account as the Defendant's mitigating factor that he has pleaded guilty at the first instance which has saved the Court and Prosecution time. The Magistrate has considered the seriousness of the offence and also that he has received profit from these activities and that he has a previous conviction of the same offence which has indicated that he is undeterred.

Conclusion

In this case, the Defendant is appealing to this Court for the extension of the grace period. He is not appealing against the total fines and the in-default sentence that was imposed on him by the Magistrate. As to the fine and in-default sentence, I find that it is neither lenient nor manifestly excessive.

The question now is whether the 4 months grace period that will expire on the 16th September 2024 that was given by the Magistrate is sufficient or should this Court disturb the decision of the Magistrate below? The main aims of sentencing are for deterrence and rehabilitation. If the instalment is given and for a long period, I agree with the Prosecution that it will dilute the effect of deterrence. I agree with the Magistrate that the Defendant committed the same offence again which indicates that he is undeterred.

The Defendant is a person who does not respect the law and will break the law in order to get money. If this Court is to extend the grace period and allow him to pay by instalment, it will not

give the right message to him, the public and others, who will follow suit and will not be deterred to commit the offence again. Being a Bruneian and a senior citizen, the Defendant should set a good example to the others especially the young generation. Being a Bruneian, we must be the ones who will protect and abide with the law. We must be the ones who must protect the people of Brunei and not be the ones who destroy Bruneians by selling and supplying cigarettes which is known to harm and destroy the health of the users and the people surrounding them. By allowing the appeal, it is as if this Court does not agree with the decision of the Court below which is not faulty. By allowing the appeal, this Court will give a wrong signal to the public that the sentence is negotiable and will thus dilute the deterrence and rehabilitation element of sentencing.

Thus, in safeguarding the deterrence and rehabilitation elements of sentencing and also in order to warn and ensure that others will not commit the same offence or other offences, the appeal is dismissed. The Appellant is to pay the remaining balance of the fine in full by the 16th September 2024 and failure to pay the fine in full, the Appellant is to serve the in-default imprisonment sentence.

Appeal is dismissed.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner