

Nur Nadiah Binti Muhammad Amiruddin @ Vidiana Anak Badendang

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 1 of 2023)**

Abdullah Soefri, JC
29th July 2023

Criminal Law – possession of cigarettes and alcoholic drink-sentenced-appeal against fine and to pay fine by instalments dismissed-grace period extended

Appellant In Person

DPP Kalilah Hussin standing for DPP Muhammad Qamarul Affyian Bin Abdul Rahman for Public Prosecutor.

Cases cited in the Judgment:

Rosani Binti Rabaha v P.P (Criminal Appeal No. 14 of 2013)

Ak Abdullah Bin Pg Jafar v P.P (Criminal Motion No. 5 of 2023)

Pengiran Saiful Rizal bin Pengiran Azahari v P.P (Criminal Motion No. 7 of 2022)

Md Hisham Bin Awang Mustaman (2017) 1 JCBD 194

Ang Suat Goh vs Public Prosecutor (Criminal Appeal No. 12 of 2011)

R v Olliver and Olliver (1989) 11 Cr. App. R. (5)

Abdullah Soefri, JC:

Introduction

On 26th January 2023, the Appellant, the abovementioned Nur Nadiah Binti Muhammad Amiruddin @ Vidiana Anak Badendang, pleaded guilty in the Magistrate's Court to two charges for the possessions of unexcised cigarettes for the first charge and of unexcised alcoholic drinks for the second charge contrary to section 146 (1)(d) of the Excise Order 2006.

Acting Senior Magistrate Dewi Norlelawati Binti Haji Abdul Hamid imposed fines of \$6200 in default of 6 months for the first charge and \$5000 in default of 5 months for the second charge. The total fines imposed was \$11,200 in default of 11 months' imprisonment and to be fully paid by 31st July 2023.

The Appellant appeals against the total fines that were imposed and also appeal for payment of fines to be made in monthly payment of \$200. The appellant had paid a total of \$950 towards the fine by paying in instalments from January to July 2023 where the monthly payment varies from \$100 to \$200 per month.

The Facts

The facts of the case can be briefly summarized that on the 27th October 2021, at about 1340 hours, officers from the Customs Enforcement Office, Kuala Belait, conducted a raid at a terrace house addressed at No. 7, Simpang 70, Jalan Mengkubok, Sungai Bakong Selatan, RPN Teres Lumut, Kuala Belait in Brunei Darussalam with regards to possession of illegal cigarettes and alcoholic drinks.

The raid has resulted to the discovery of cigarettes and alcoholic drinks at various locations of the house as follows:

1. 04 cartons x 10 packets x 20 sticks of Era Black Menthol cigarettes
2. 02 cartons x 10 packets x 20 sticks of Era Premium cigarettes
3. 01 carton x 10 packets x 16 sticks of Grow Black Ice cigarettes
4. 04 packets x 20 sticks of Era Premium cigarettes
5. 04 packets x 20 sticks of Marlboro Gold Original cigarettes
6. 07 bottles pf Label 5 Scotch Whisky@1 litre 40% Alc/Vol

The amount of excise duty evaded for the cigarettes and alcoholic drinks amounted to \$770 and \$140 respectively.

Magistrate's Sentence

The Acting Senior Magistrate imposed a fine of \$6200 in default of 6 months for the first charge and a fine of \$5000 in default of 5 months for the second charge. Cumulatively the fine is \$11,200 in default of 11 months and was given a grace period until 31st July to pay the fine which is a grace period of slightly more than 6 months. In sentencing the Acting Senior Magistrate has taken into account of her "*instant guilty plea*" and "*unblemished record*" in her favour. The Acting Senior Magistrate used the minimum sentence in imposing the fine. As for the first charge she used the multiplier of 8 and for the second charge she used the minimum sentence of \$5000 as provided by the law.

Parties Submission

The Prosecution submitted that the sentence imposed by the Magistrate were not manifestly excessive and were within the sentencing range for similar offences and the use of a multiplier of 8 for the first charge which is the lowest multiplier amount stipulated by the law and the

prescribed minimum for the second charge was *“proper and within range and by no means manifestly excessive.”*

The Prosecution further submits that *“the 6 months grace period is reasonable and sufficient for the Appellant to settle the fine.”* Prosecution highlighted the case of *Rosani Binti Rabaha v P.P* to show the deterrent objective of fines. The case of *Ak Abdullah Bin Pg Jafar v P.P* was cited where the Honorable Chief Justice held that *“..... the Magistrate allowed him a generous period of 6 months to pay”*. The same observation was also made in the case of *Pengiran Saiful Rizal bin Pengiran Azahari v P.P* where a grace period of 10 months to settle a fine of \$49,000 was held *“The senior Magistrate has also been generous with the amount time allocated to the Appellant to settle the fine.”* The Prosecution further submits that the cases that were cited show that *“a grace period of 3 to 10 months was imposed depending on the quantum of fines and also circumstances of the case”*. Further it is submitted that *“a longer grace period would dilute the deterrent element of the sentence. Further, a longer time to pay the fine would be oppressive to her and would be an administrative burden to the court by collecting every month over a longer period.”* It is further submitted by the Prosecution that *“granting an extension of the grace period would not secure payment. On the other hand, if a longer period is allowed, the Respondent submits that it would send a wrong message to a likely future offender.”*

The Appellant, Defendant, informed the Court that she is currently employed with a salary of \$500pm and will only receive overtime payment if she is asked to do overtime. She has two children aged 9 years and 7 years old. She is staying with her parents and she supports her parents. She is never married and thus all family expenses are borne by her. She applies for the grace period to be extended as she needs the money to pay for the children school expenses and apply to pay the fine in instalments at \$200 per month. It is not disputed that she had made partial payment of \$950 towards the fine by paying in instalments from January to July 2023 where the monthly payment varies from \$100 to \$200 per month.

She further informed the Court that she never tries to apply for support from ‘Baitul Mal’ or from the Welfare Department.

Deliberations

1. Sentence passed by Acting Senior Magistrate

The Acting Senior Magistrate has correctly given all the credits in favour of the appellant. The Magistrate took a multiplier of 8 for the first charge and imposed the minimum for the second charge. In ***Md Hisham Bin Awang Mustaman (2017) 1 JCBD 194***, Lugar-Mawson observed that:

“...there is an established tariff sentencing range based on a multiplier of 8 to 10 to the amount of duty evaded as the financial penalty to be imposed on a first-time offender after an early guilty plea for an offence under section 146(1)(d)”

2. Payment by Installments

The Appellant plead to pay the fine by paying \$200 per month and the Respondent objected to the said application because if she pays \$200 per month, it will take more than 4 years to pay off the balance of the fine which is \$10,250. The Respondent further submits that *“a longer grace period would dilute the deterrent element of the sentence.....a longer time to pay the fine would be oppressive to her and would be an administrative burden to the court by collecting every month over a longer period of time.”*

It was observed by then Acting Chief Justice, Dato Paduka Steven Chong as he was known then in the case of ***Ang Suat Goh vs Public Prosecutor (Criminal Appeal No. 12 of 2011)*** that:

*“In appropriate cases the court may allow the offender to pay a fine by installments and there is nothing wrong in principle in allowing a long period to pay providing it is not an ‘undue burden’ and ‘too severe a punishment’ having regard to the nature of the offence and the nature of the offender. One of the objects of a fine is to remind the offender that what he has done is wrong, and the fact that he is being reminded of that over the months is no bad thing at all”: see **R v Olliver and Olliver (1989) 11 Cr. App. R (5)**.*

Lord Lane, C.J, delivering the judgment of the Court of Appeal in ***R v Olliver and Olliver***, having reviewed the authorities, concluded that *“a two-year period will seldom be too long, and in an appropriate case three years will be unassailable”* depending on the nature of the offender and the nature of the offence.”

Conclusion

The fines imposed by the Acting Senior Magistrate is not excessive. However, having considering the Appellant’s situation and the circumstances of the offence in which it is undisputed that the Appellant is the only breadwinner and that she is concerned about the continuity of her children’s primary education as she has already withdrawn the children from Quraan reading classes as she has not enough money to pay for the classes. As to the offence itself it is not disputed the all the items found and seized are for her personal consumption. There is no evidence that she is a member of a syndicate involved in the smuggling or sale of contraband cigarettes and alcoholic drinks. The appellant is acting alone.

Having had said all the above and considering her financial circumstances, I am satisfied that instalment is not the best option. If I order her to pay \$200 per month it will take more than 4 years to pay off all the fine. If I order her to pay more than \$200 per month, she might not be able to pay consistently and she will be imprisoned for failing to pay at the end of each subsequent months. I therefore order for the grace period to be extended for another 12 months. She must pay all the balance of the fine of \$10,250 by Wednesday 31st July 2024 before 12pm and to serve the default sentence if she fails to pay totally the fine by 31st July 2024 before 12pm.

The appeal is allowed to that extent.

A handwritten signature in black ink, appearing to read 'Abdullah', written in a cursive style.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner