

Didi Nur Nabilah Binti Muhammad Kanchang

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 23 of 2024)**

Haji Abdullah Soefri bin POKPSM DSP Haji Abidin, J.C.
12th April 2025

Headnote: Criminal Law – Appeal – Extension of grace period and to pay by instalment.

Appellant/Defendant In Person.

DPP Syaffina Bte Abd Hadzid and PO Mohd Syafi'e Habibuallah Edi Mirhan for the Public Prosecutor.

RULING

Haji Abdullah Soefri, J.C:

This is an appeal by the Appellant, the Defendant, against sentence imposed on the Defendant by Senior Magistrate Dewi Norlelawati binti Hj Abdul Hamid. The appeal is to extend the grace period in paying the fine.

Background

The Appellant is facing with a charge for an offence under Section 146(1)(d) of the Excise Order, 2006 and punishable under Section 146(1)(ia) of the same.

The charge is related to possession of vape, e-cigarettes and vape juice and the total excise duty evaded was BND\$4,800.

The Defendant pleaded guilty to the charge and was sentenced to \$38,500 in default of 14 months' imprisonment.

The Senior Magistrate gave a grace period until 24th April 2025 to pay the fine. The sentence was imposed on 31st October 2024 and thus, the grace period given by the Senior Magistrate was around 6 months.

Grounds of Appeal

The Appellant has confirmed with this Court that she is not appealing against the sentence but appeal for the grace period to be extended.

Her ground of appeal for the grace period to be extended are as follows:

- 1) She is full time housewife and has no other income.
- 2) She is supporting her children who are still going to school and one of them is sitting for the 'O' level exam this year.
- 3) Her husband is suspended from his work and has not receiving any income.
- 4) She is paying debts such as housing, water bill and electricity bill.
- 5) She is a first-time offender and has regretted what she had done and will not commit the same offence again.

Prosecution Submission

Prosecution submitted that the sentence imposed by the Senior Magistrate is not manifestly excessive. It is appropriate and consistent with the penalty prescribed in the Excise Order.

The range of the sentencing as provided by the law for duty evaded of \$4,800 as in this case is between \$38,400 for the minimum sentence and maximum of \$72,000. The Magistrate imposed a sentence of \$38,500.

As to the default sentence, the Prosecution submitted that the default sentence imposed by the Magistrate, 14 months, are on the lenient side if the calculation prescribed by Section 132 of the Excise Order 2006 is followed.

The Prosecution submitted that the 6 months grace period granted for the payment of the fine is reasonable and proper.

I have highlighted the Appellant's grounds of her appeal earlier and I have taken them into account.

The fine that was imposed by the Senior Magistrate are well within the 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).

The fine imposed by the Senior Magistrate is not manifestly excessive and are in accordance with the range of fines commonly imposed for these offences similarly the default prison sentences are in line with those passed in similar cases for this offence.

If the Appellant is to pay by instalments at \$100 per month which I gather that is the amount that she received monthly as *nafkah*, she has no employment and the husband has no income as he is suspended, it will take her 385 months which is about 32 years to settle all the fines. I take \$100 as the highest that she can pay as in the lower Court she proposed to pay \$50 per month.

To allow the Appellant to extend the grace period and to pay by monthly instalment will dilute the deterrence effect and also will send a wrong signal to the public and would be offenders. This makes it more worse that the Appellant (the Defendant) has blatantly broke the law by selling the items for over a long period of time.

Having has said all the above and taking into account the matters that the Appellant has put before this Court that I have highlighted earlier, I do not see any reason why this Court should disturb the Senior Magistrate's sentencing and grace period which is not manifestly excessive and the grace period of 6 months is appropriate and reasonable.

The appeal is dismissed and the Magistrate's sentence and grace period order to pay the fine by 24th April 2025 and failure to pay the fine in full by that date and before 2:00pm to remain and so is other orders.

Appeal is dismissed and fine is to be paid in full by 24th April 2025 before 2:00pm and failure to pay the fine in full, the Appellant (Defendant) to serve the default sentence of 14 months' imprisonment.

Haji Abdullah Soefri Bin Poksm Dato Seri Paduka Haji Abidin
Judicial Commissioner