

Mohammad Sahrul Bin Duah

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 28 of 2024)**

Haji Abdullah Soefri bin POKPSM DSP Haji Abidin, J.C.

Date of Ruling: 12th June, 2025

Headnote: Criminal Law – Possession of contraband cigarettes – Payment of fine by instalment – Factors to be considered – Appeal dismissed.

Appellant In Person/Defendant.

DPP Aqilah@Syafina Abd Hadzid for the Public Prosecutor.

Cases cited:

Norkidah binti Abu Bakar v Public Prosecutor (Criminal Motion No. 10 of 2014)

Aisah binti Mohd Zaini and PP and Sepinah binti Haji Sa'at and PP (Criminal Appeal No. 29 of 2011)

Md Hisham bin Awg Mustaman V Public Prosecutor (Criminal Appeal No. 34 of 2016)

Ak Abdullah bin Pg Jafar and Public Prosecutor (Criminal Motion No. 5 of 2023)

RULING

Haji Abdullah Soefri, J.C:

This is an appeal by the Appellant (Defendant) against the sentence which was filed on 28th December 2024.

The Appellant, hereafter, known as the Defendant was convicted on his own guilty plea on 18th December 2024 for a charge under Section 146(1)(d) of the Excise Order 2006 and punishable under Section 146(1)(ia) of the same.

For the offence that he was convicted, he was in possession of unexcisable goods which are as follows:

- 1) 06 cartons x 10 packets x 20 sticks of Era Black Menthol cigarettes
- 2) 05 cartons x 10 packets x 20 stick of Era Premium cigarettes
- 3) 39 packets x 20 sticks of Era Black Menthol cigarettes
- 4) 20 packets x 20 sticks of Era Strawberry Spearmint Double Switch cigarettes
- 5) 14 packets x 16 sticks of L.A Ice cigarettes
- 6) 11 packets x 20 sticks of Era Full Flavour cigarettes
- 7) 07 packets x 20 sticks of Era Menthol cigarettes

- 8) 06 packets x 20 sticks of Era Premium cigarettes
- 9) 04 packets x 16 sticks of Grow Black Ice cigarettes

The excise duty evaded in this case was \$2,074 and the Defendant was sentenced to a fine of \$21,000 in default of 13 months imprisonment and he was given about 6 months grace period to pay the fine which is until 18th June 2025.

The sentence imposed is a multiplier of about 10 where the normal tariff is a multiplier between 8 to 10 and the in default sentence is within the period as provided by Section 132 of the Excise Order.

Having had said the above and taking into account that the Magistrate has taken all the appropriate mitigating factor and the aggravating factors which cannot be faulted, the sentence of a fine of \$21,000 is neither lenient nor manifestly excessive.

The Defendant also for the grace period to be extended.

The Defendant has made a payment \$2,700 towards the total fine and the balance of the fine to be paid is \$18,300. The Defendant proposed to pay between \$300 to \$450 per month.

If the Defendant is to pay \$300 per month, the fine will be paid in full within 61 months and if the Defendant pay \$450 per month, it will take about 40 months.

The Defendant is employed and earn around \$1,600 to \$1,800 per month if his overtime is taken into account.

His wife is selling 'nasi katok' and earn a net profit of \$60 to \$70 per month.

The Defendant has many other commitments.

The Defendant did not deny that the cigarettes were for sale. There are a total of 211 packets of cigarettes in his possession for sale.

In *Norkidah binti Abu Bakar v Public Prosecutor* (Criminal Motion No. 10 of 2014), Dato Seri Paduka Hj Kifrawi, CJ stated as follows:

"To give her more time to pay would be a further financial burden to her. She still has to find the means to pay. This would also cause a further administrative burden to the Court to monitor whether she has made the payment as ordered by the Court."

In the above case, the Defendant was sentenced on 11th September 2013 to pay fine of \$19,300 and was given until 30th June 2014 to pay the fine. She was given a grace period of 9 months to pay.

In the case, the grace period given was about 9 months.

In *Aisah binti Mohd Zaini and PP and Sepinah binti Haji Sa'at and PP* (Criminal Appeal No. 29 of 2011), Steven Chong, J, as he was then finds that there is no evidence to suggest that the Appellant were

members of a syndicate involved in the smuggling of contraband cigarettes. The fines imposed are substantial and the Appellants are not persons of means and they are first offenders and the Lordship think they should be given the opportunity which they seek to pay their fine and orders A1 to pay her fine by monthly instalment of \$1,100 over 35 months and A2 of \$1,100 over 37 months.

In the above case, the Senior Magistrate where they first appeared before indicated to the Appellants that he was prepared to allow them to pay the fines by monthly instalment of \$1,100 over a period of 3 years and at that time, the Appellants indicated at that time they did not have the means to pay on those terms.

However, in appeals they have indicated to the Appellate Court that they, with the assistance of their husbands, that they are able to pay the fines on the terms which the Senior Magistrate was minded to impose initially.

This is different from the present case. There is nothing in the notes of proceedings of the Defendant proposed instalment or the Magistrate made any indication that she is prepared to allow the Defendant to pay instalment at a certain amount as in the above cited case.

In *Md Hisham bin Awg Mustaman V Public Prosecutor* (Criminal Appeal No. 34 of 2016), Gareth John Lugar-Mawson, JC did not accept the instalment offer of \$200 to \$100 as it will take between 11 years to 23 years to make full payment. Instead, after taking into account of the matter presented by the Defendant before him, as an act of clemency, he extends the time to pay by 2 months from today's date.

I have highlighted three different judgments of my fellow judges.

All result in different decisions and it is obvious that the decisions that were made were based on the circumstances of each individual case.

As to this case, obviously that there was no indication from the Magistrate that she is prepared to allow the Defendant to pay by instalment of the amount that the Magistrate proposed.

There is also no extenuating circumstances that the Defendant has shown to this Court for the Court to exercise his clemency.

The Defendant indicated that he has much commitment to pay and worries that if he is unable to pay and go to jail, it will be difficult to support the family and to pay off his commitments.

I agree with the Prosecution that Court has recognized that family hardship, while unfortunate, is not an exceptional circumstances.

I am agreeable with the Prosecution that,

“allowing a prolonged payment period would not only extend his financial burden but also place an administrative strain on the Court in managing long-term collections. Moreover, granting

such leniency may also undermine the deterrent effect of the sentence and encourage non-compliance among future offenders.”

In *Ak Abdullah bin Pg Jafar and Public Prosecutor* (Criminal Motion No. 5 of 2023), Steven Chong, CJ states:

“Turning to the applicant’s payment proposal, the Magistrate allowed him a generous period of 6 months to pay. He has paid \$1,960 so far. According to his payment proposal would mean giving him over 8 years to pay which would be inimical to the deterrence objective of the sentence.”

Having had said all the above, I am satisfied that the sentence imposed by the Magistrate is not manifestly excessive and the Magistrate grace period of 6 months is generous.

The proposal made by the Defendant on the instalment would mean giving him to pay between 40 to 61 months to pay off the balance of the fine and to quote Steven Chong JC *“would be inimical to the deterrence objective of the sentence.”*

The appeal is dismissed and the Defendant is to pay the remaining balance of the fine by 18th June 2025 before 3:00pm and failure of that, the Defendant is to serve the default sentence.

Other orders by Magistrate to remain.



HAJI ABDULLAH SOEFRI BIN POKSM DATO SERI PADUKA HAJI ABIDIN
Judicial Commissioner