

Hj Abdul Rahim bin Hj Matusin

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 46 of 2020)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC

24th April 2021

Criminal Law --- section 420 Penal Code --- Plead Guilty --- imprisonment --- Appeal --- ill health not a mitigating factor except in the most exceptional cases --- no judicial mercy --- appeal dismissed.

Appellant in person.

DPP Pg Hj Nor'Azmeena binti Pengiran Hj Mohiddin for Respondent/Public Prosecutor.

Cases referred to:

Awg Ibrahim bin Awg Besar and PP (HCCM No.30 of 2020)

Leaw Siat Chong vs PP (2001) 3 SLR (R) 646

PP v Shaik Raheem s/o Abdul Shaik Shaikh Dawood (2006) SG DC 86

JUDGMENT

Hj Abdullah Soefri, JC:

This is an appeal by the Defendant (Appellant) against the sentence imposed on the Appellant by the Magistrate Court on 21st December 2020.

The Appellant was charged with a charge under section 420 of the Penal Code, Chapter 22 whereby the penalty for such offence is imprisonment for a term which may extend to 7 years and shall also be liable to a fine.

The Appellant, after he had pleaded guilty, agreed with the statement of facts. Briefly, the facts are as follows:-

On 23rd June 2016, the Defendant went to a furniture store and met with the Director of the said company. The Defendant informed the Complainant that he wished to purchase furniture and other items from the said company. The Defendant further told the Complainant that he would be able to pay for all the items in cash if the Complainant was able to deliver all the items immediately. The Complainant initially refused to sell any furniture to the Defendant seeing that the payment for the items would only be made several days after delivery of the items.

However, subsequently, after the Defendant was able to guarantee payment in the form of a post-dated cheque for the items that he intended to purchase, the Complainant agreed to sell the items to the Defendant.

On 27th June 2016 (4 days later), the Defendant presented to the Complainant a post-dated BIBD cheque amounting to \$74,210 with the date 2nd July 2016. The cheque was to be drawn from the Defendant's personal bank account at BIBD.

Believing that the said BIBD cheque would be honoured on the date stated in the cheque as informed by the Defendant, the Complainant agreed to deliver the 12 sets of furniture and a carpet.

The Defendant knew at the time when he presented the cheque that it would not be honoured as there were no funds in the said BIBD bank account. When the Complainant cashed the cheque it was unsuccessful as there was insufficient money in the bank account.

Police investigation revealed that between the 2nd June 2016 and 2nd July 2016, the balance was \$0.36.

The Magistrate in sentencing has taken the following into consideration:-

1. Delay of 4 years which was due to the Prosecution;
2. Defendant has still not paid the Complainant despite that there is a delay in the case;
3. The amount is not small, which is \$74,210;
4. It is a serious offence;
5. Defendant's plea of guilty at the earliest instance;
6. Defendant's clean record; and
7. Starting point of 18 months and reduce to 12 months.

The Magistrate has taken all the correct mitigating factors and aggravating factors when he imposed the sentence. I am satisfied that the sentence that the Magistrate had imposed is neither too short nor too long.

The Appellant had submitted as part of the grounds for the sentence to be reduced is due to his medical condition which is Osteoarthritis of bilateral knees.

In ***Awg Ibrahim bin Awg Besar and Public Prosecutor (Criminal Motion No.30 of 2020)*** Steven Chong CJ, states:-

"Ill health is not a mitigating factor except in the most exceptional cases when judicial mercy may be exercised: Leaw Siat Chong v Public Prosecutor [2001] 3 SLR (R) 646 at [13]".

In *Public Prosecutor v Shaik Raheem s/o Abdul Shaik Shaikh Dawood (2006) SG DC 86*, “the appellant was diagnosed as suffering from high blood pressure, diabetes, and bilateral knee osteoarthritis. The pain in his right knee was permanent and likely to worsen. Though his disability was sufficient to qualify as a handicap under the Automobile Association of Singapore’s guidelines, this did not move the court to exercise mercy.”

In each of these cases, the plea for mercy was disregarded simply because the illness complained of was not of a sufficient severity.

Before me, the Appellant submitted that the reason for his sentence to be reduced is that so he could make an appointment and to restart his treatment on the Osteoarthritis of the bilateral knee.

This medical condition and reason are not of a sufficient severity and the Court will not exercise judicial mercy for this application.

Having had said all the above, I am satisfied that the sentence imposed by the Magistrate Mohammad Marzuqi bin Sabtu is not manifestly excessive and the medical condition is not of a sufficient severity and this Court will not exercise judicial mercy.

Appeal is dismissed.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner