Nur Syafiq Iskandar bin Suhaili

and

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 30 of 2018)

Pg DP Rostaina bte Pg Hj Duraman, J
26th December 2018

Criminal Law and procedure --- retraction of plea of guilty --- principles applicable --- safeguards for determining validity of plea of guilty --- accused must understand the nature and consequences of his plea --- section 175(1) and section 175(2) of the Criminal Procedure Code --- second or subsequent offender --- minimum sentence --- section 146(1)(d) of the Excise Order 2006

Cases cited:
Public Prosecutor vs Azim bin Jakeria (Criminal Appeal No.4 of 2011)
Rosani binti Rabaha vs Public Prosecutor (Criminal Appeal No.14 of 2013)

Appellant in person.
DPP Dr Mohammad Hussin Ali bin Idris for Respondent/Public Prosecutor.

Pg DP Hjh Rostaina, J

1. The Appellant who was D1 in this matter filed his Notice of Appeal on 31st October 2018. He appeals against conviction and sentence as he now wants to retract his plea stating that the items seized in the charge belongs to his brother-in law, Raimi bin Ibrahim and are not his.

2. On 17th October 2018, before Magistrate Dewi Norlelawati binti Haji Abdul Hamid the Appellant pleaded guilty to one count of possession of unexcisable goods contrary to section 146(1)(d) of the Excise Order 2006. He was sentenced to a fine of $246,000 or 2 years' imprisonment in default of payment. He has a grace period of 6 months (until 30th April 2019) to settle the fine. The charge was as follows:-

1st Charge (only against D1)
That you, on the 16th day of October 2018 at about 2125 hours, at a house addressed at No.12, Simpang 791-103-4, STKRJ Sungai Buloh, Tanah Jambu in Brunei Darussalam, did knowingly have in your possession unexcisable goods, to wit:

1. 62 cartons x 10 packets x 16 sticks of Extreme Mild Menthol cigarettes
2. 192 packets x 16 sticks of Extreme Mild Menthol cigarettes
3. 11 cartons x 10 packets x 20 sticks of Era Premium cigarettes
4. 08 packets x 20 sticks of Era Premium cigarettes
5. 05 cartons x 10 packets x 20 sticks of Era Full flavour cigarettes

6. 03 packets x 20 sticks of Era Full Flavour cigarettes
7. 11 cartons x 10 packets x 20 sticks of Era Black Menthol cigarettes
8. 06 packets x 20 sticks of Era Black Menthol cigarettes
9. 07 cartons x 10 packets x 20 sticks of Era Ice Plus cigarettes
10. 03 packets x 20 sticks of Era Ice Plus cigarettes
11. 02 cartons x 10 packets x 20 sticks of Premium International cigarettes
12. 09 packets x 20 sticks of Premium International cigarettes
13. 01 carton x 10 packets x 20 sticks of Marlboro (red) cigarettes
14. 04 packets x 20 sticks of Marlboro (red) cigarettes
15. 02 cartons x 10 packets x 20 sticks of Marlboro (gold) cigarettes
16. 09 packets x 20 sticks of Marlboro (gold) cigarettes
17. 01 carton x 10 packets x 20 sticks of Marlboro (blue) cigarettes
18. 03 packets x 20 sticks of Marlboro (blue) cigarettes
19. 01 carton x 10 packets x 20 sticks of Marlboro Menthol cigarettes
20. 06 packets x 20 sticks of Marlboro Menthol cigarettes
21. 01 carton x 10 packets x 20 sticks of Dunhill (blue/yellow) cigarettes
22. 06 packets x 20 sticks of Dunhill (blue/yellow) cigarettes
23. 01 carton x 10 packets x 20 sticks of Dunhill (grey) cigarettes
24. 02 packets x 20 sticks of Dunhill (grey) cigarettes
25. 03 cartons x 10 packets x 20 sticks of Dunhill (black/blue) cigarettes
26. 04 packets x 20 sticks of Dunhill (black/blue) cigarettes
27. 03 cartons x 10 packets x 20 sticks of Era Menthol cigarettes
28. 06 packets x 20 sticks of Dunhill (blue) cigarettes
29. 10 packets x 20 sticks of Dunhill (green) cigarettes
30. 10 packets x 20 sticks of Dunhill (purple) cigarettes

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

Penalty – section 146(1)(ia) of the Excise Order 2006

In the case of unexcisable goods, such goods being dutiable goods consisting of wholly or partly of tobacco

(A) For the first offence, to a fine of –
(AA) not less than 8 times the amount of excise duty or $5,000, whichever is greater amount; and
(AB) not more than 15 times the amount of excise duty or $50,000, whichever is the greater amount; and

(B) For the second or any subsequent conviction, to a fine of –
(BA) not less than 20 times the amount of excise duty or $10,000, whichever is the greater amount; and
(BB) not more than 30 times the amount of excise duty or $100,000, whichever is the greater amount, imprisonment for a term not exceeding 3 years or both,

Except that when the amount of excise duty cannot be ascertained, the penalty may to a fine not exceeding $100,000.00.

3. Section 175 of the Criminal Procedure Code, Cap 7 provides:-

Charge to be read and explained

(1) When the accused appears or is brought before the Court a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to him, and he shall be asked whether he is guilty of the offence charged or claims to be tried.

Conviction on plea of guilty

(2) If the accused pleads guilty to a charge whether as originally framed or as amended under section 178 the plea shall be recorded as nearly as possible in the words used by him and he may be convicted thereon:

Provided that before a plea of guilty is recorded the Court may hear the complainant and such other evidence as it considers necessary and shall ascertain that the accused understands the nature and consequences of his plea and intends to admit, without qualification, the offence alleged against him.

4. A perusal of the Magistrate's record shows that after the charge and penalties had been read and explained to him in Malay, he pleaded guilty, and that he understood the nature and consequences of his plea. It is evident, therefore, that the Magistrate had fully discharged her duty under **section 175 of the Criminal Procedure Code**.

5. Furthermore, the record also shows that he had agreed with the Statement of Facts tendered by the prosecution. In summary, the admitted facts were on the 16th October 2018 at about 2125 hours, officers from the Anti-Narcotic Control Bureau and Customs Preventive Unit had made an inspection at the address stated in the charge and found contraband cigarettes. During the investigations, he admitted he purchased all the cigarettes from a man known as *Salam* at Kampong Bolkiah even stating the prices he had paid for them. He admitted these cigarettes were intended for sale. He admitted the excise duty evaded was B$12,286. He admitted he has a previous conviction on 11th May 2017 for the same offence under section 146(1)(d) of the Excise Order 2006.

7. I am satisfied that the Appellant had pleaded guilty to the charge without qualification, he was conscious of the nature and consequences of his plea and that he unreservedly admitted to the facts which fully supported the offence. It follows that the appeal against conviction must be dismissed.

8. It is clear with effect from 26th March 2018, the range of sentencing tariff involving contraband cigarettes meted out on a second offender under section 146(1)(d) of the Excise Order 2006 carries a minimum multiplier of 20 times to the amount of excise duty evaded as the financial penalty to be imposed. In this case, the excise duty evaded was B$12,286.

9. I agree with the DPP that neither the fine nor the sentence of imprisonment in default of payment can be said to be excessive. I find them proper and in line with the penalty prescribed in the Excise Order 2006.

10. The Appellant is not employed. He has no income. It cannot be said with certainty when he can settled this fine. I doubt his ability to pay the fine. Allowing him a further extension of time would dilute the deterrent element of the sentence. I find the Magistrate has given him sufficient time to pay the fine. The fine is to be paid by 30th April 2019.

11. I therefore dismiss the appeal.

PG DP HJH ROSTAINA BTE PG HJ DURAMAN
Judge, High Court
26th December 2018