

Metin anak Kelak

and

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 35 of 2018)**

Pg DP Rostaina bte Pg Hj Duraman, J

4th February 2019

*Criminal Law --- offence under section 146(1)(d) and punishable under section 146(1)(i) of the
Excise Order 2006 --- appeal for a longer period of instalment payments*

Cases cited:

Abdul Aziz bin Moktar vs PP (HCCA 56 of 2010).

Asri bin Ramlee vs PP (HCCA 22 of 2011).

Appellant in person.

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

JUDGMENT

Pg DP Hjh Rostaina, J

1. On 7th April 2018, the appellant was convicted on his own plea to one count under section 146(1)(d) of the Excise Order 2006. The charge was as follows:-

Charge

That you, on the 16th day of March 2018 at about 2235 hours, inside a vehicle bearing registration number BT2915 (Hyundai Accent) at the inward section at the vicinity of Customs Kuala Lurah Control Post in Brunei Darussalam did have in your possession unexcisable goods, to wit

- 1) 01 carton x 10 packets x 20 sticks of Marlboro cigarettes
- 2) 01 carton x 10 packets x 20 sticks of Premium International cigarettes
- 3) 01 carton x 10 packets x 20 sticks of Marlboro Firm Filter cigarettes
- 4) 01 carton x 10 packets x 20 sticks of Parkway Filter cigarettes
- 5) 01 carton x 10 packets x 20 sticks of Dunhill Tobacco London Limited cigarettes
- 6) 01 carton x 10 packets x 16 sticks of L.A Ice cigarettes
- 7) 01 carton x 10 packets x 20 sticks of Era Full Flavour cigarettes
- 8) 02 cartons x 10 packets x 20 sticks of Era Premium cigarettes

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

Penalty-section 146(1)(i)

In the case of unexcisable goods, such goods being dutiable, for the first offence to a fine not less than 6 times the amount of excise duty or \$40,000.00 whichever is the lesser amount, and not more than 20 times the amount of excise duty or \$40,000.00 whichever is the greater amount and for a second or any subsequent conviction, to such fine, to imprisonment for a term not exceeding 2 years or both;

Provided that when the amount of excise duty cannot be ascertained, the penalty may amount to a fine not exceeding \$40,000.00
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2. Magistrate Hajah Ervy Sufitriana bte Haji Abdul Rahman sentenced him a fine of B\$7,100 or 7 months' imprisonment in default of payment. He was given 5 months grace period to settle the fine that is until 7th September 2018. He now appeals for a longer period of instalment payments.
3. The admitted facts were that on 16th March 2018, his vehicle was inspected by the Kuala Lurah's customs officers and contraband cigarettes were found. He admitted he purchased them in Limbang for his own consumption but he now informed the court he carried these contraband cigarettes for his four friends. The excise duty evaded was B\$880.
4. DPP Dr Mohammad Hussin Ali bin Idris submitted that the fine of B\$7,100 at 8 times the duty evaded is not manifestly excessive. It is within the range of sentences normally imposed by the court below for similar offences. Therefore, to allow for a longer grace period at a monthly payment at B\$100 would take more than 5 years to settle and this would defeat and dilute the deterrent element of the sentence. Further it would be an administrative burden to the Court. To support his argument he cited the cases of **Abdul Aziz bin Moktar vs PP (HCCA 56 of 2010)** and **Asri bin Ramlee vs PP (HCCA 22 of 2011)**.
5. I turn to the appellant's case. He is aged 36, single and has no prior conviction. He earns B\$800 monthly from his job as a trolley boy at Mabohai's Supa Save. He pays B\$214 monthly towards his loan and B\$100 for his rent.
6. In **Ang Suat Goh v Public Prosecutor (Criminal Appeal No.12 of 2011)** Dato Paduka Steven Chong, as Ag. CJ then made reference to the case of **R v Olliver and Olliver (1989) 11 Criminal Appeal R(s) 10**, where Lord Lane, CJ said, "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.
7. In the case of **Khairul bin Haji Kula vs Public Prosecutor, (CA No.24 of 2014)** and **Abdul Hadzi bin Haji Kula vs Public Prosecutor, (CA No.25 of 2014)** the COA Justices on, "fines as a punishment" said the following: "*The severity of such a sentence depends upon the ability of the accused to pay. A small fine on a poor man may be severe punishment whereas a substantial fine to a wealthy man may be insignificant.*"
8. Balancing between the need to preserve the deterrence objective and his personal circumstances, I will give him the opportunity to pay the total fine as he will be reminded over the months ahead what he did was wrong and so the deterrence objective of the sentence is preserved. I allow him to pay and settle the total fine within 6 months that is by 5th August 2019. The appeal is allowed to that extent.

PG DP HJH ROSTAINA BTE PG HJ DURAMAN
Judge, High Court
4th February 2019