

SITI ZUBAIDAH BINTI MARSAL

AND

PUBLIC PROSECUTOR

(High Court of Brunei Darussalam)
(Criminal Appeal No 36 of 2015)

Hairol Arni Majid, J.

14th May 2016.

Criminal law – Appeal – Possession of Contraband cigarettes – Appeal for extension of time to pay fine.

Appellant unrepresented

DPP Muhammad Aiman Adri Ahmad Zakaria for Respondent

J U D G M E N T

The appellant was convicted after trial on the 2nd July 2015 for an offence under section 146(1)(d) of the Excise Order 2006. She was sentenced to a fine of \$14,700 in default of which, a custodial sentence of 12 months was imposed. She was given 8 months to pay the fine.

Before me she pleaded for further extension of time to pay the fine and proposed \$150 monthly instalment. She said she had made payment of \$1,230 so far.

Mr. Aiman submits that should if court is minded to give an extension it should not extend beyond 3 years, as had been the ruling in an earlier case on appeal.

The Magistrate had graciously given 8 months for the appellant to pay the fine without examining the appellant as to her means. The appellant's submission in court reveals that she is a divorcee and has 4 children, 2 of which are still studying. She has just recently received \$200 monthly assistance from JAPEM. She says she has health issues and are currently seeking medical attention at the hospital.

Given that for the whole of 8 months and up to today, she was only able to pay \$1,230, I believe that she had difficulties coming up with the payment. Assistance from JAPEM is hardly sufficient to pay for her household expenses let alone the installments payment.

As regards the fine imposed by the Magistrate, I do not think it can hardly be said to excessive. I find no basis to interfere with this fine.

What struck me the most about custom cases is how the defendants in most cases do not seem to be concerned in complying with the order of the Magistrate Court below. It appears to me that most defendants view the fines imposed on them as a kind of a civil debt of sort owe to the government rather than a court punishment. It's disheartening to see this happening, appearing in court with the perception that they can negotiate with the court on appeal with some kind of repayment scheme akin to examination of judgment debtor in a civil court knowing that they do not have the means to pay them but with the expectation that it would in the end be accepted by the court.

In this case, I dismiss the appeal as far as the fine to be reduced and ordered the appellant to pay the fine by the end of May 2016.

Dato Paduka Hairol Arni Majid
Judge, High Court