Nazirah Faiqah binti Adeni

vs

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 3 of 2020)

Pg DP Rostaina Pg Hj Duraman, J
1st July 2020

Criminal Law --- Section 146(1)(d) of the Excise Order 2006 --- possession of contraband cigarettes --- asking for longer period of instalment payments --- dilution of deterrent element of sentence.

Cases referred to:-
Rosani binti Rabaha vs PP (HCCA No. 14 of 2013)
Norkidah binti Abu Bakar vs PP (HCCM No. 10 of 2014)
Liew Shauw Ming vs PP (HCCA No. 14 of 2018)

Appellant in person.
PO Hjh Siti Mu'izzah binti Hj Sabli for Respondent /Public Prosecutor.

Pg DP Hjh Rostaina, J

JUDGMENT

1. On 6th January 2020, the Appellant pleaded guilty to one count of possession of contraband cigarettes under section 146(1)(d) of the Excise Order 2006. The excise duty evaded was B$24,800. Magistrate Pg Shahyzul Khairuddien bin Pg Abdul Rahman sentenced her to a fine of B$250,000 or 26 months' imprisonment in default of payment. He gave her a period of 36 months to settle the fine that is by 29th February 2023. The charge was as follows:-

   Charge:-
   That you on the 22nd day of December 2019 at about 2215 hours inside a vehicle bearing registration number BAN2708 (Kia Optima) at the inward section at the vicinity of Customs Sungai Tujoh Control Post, Kuala Belait in Brunei Darussalam did have in your possession unexcisable goods, to wit:

   1. 60 cartons x 10 packets x 16 sticks of Extreme Mild Menthol cigarettes
   2. 03 boxes x 50 cartons x 10 packets x 20 sticks of Era Premium cigarettes
   3. 01 box x 50 cartons x 10 packets x 20 sticks of Era Black Menthol 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 under 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.

2. The facts revealed that on 22nd December 2019, Customs officers at the Sungai Tujoh Control Post stopped the vehicle driven by the Appellant and found that she was in possession of contraband cigarettes which she had purchased in Miri, Malaysia with the intention of selling them in order to pay off her husband's gambling debts.

3. She is aged 23, is a young mother with two children and is unemployed. In her effort towards paying the fine imposed, she started her own small scale business selling food and to date, she had paid B$1,600 towards the fine. She is asking for more time to pay the remainder of the fine by proposing a much lower monthly instalment payment of between B$50 to B$100. It is clear from the facts put forward that she has financial difficulties and does not receive any financial support from her husband to whom she is now separated.

4. The range of sentencing tariff involving contraband cigarettes meted out on a first time offender under section 146(1)(d) of the Excise Order 2006 is between 8 to 15 times to the amount of excise duty evaded as the financial penalty to be imposed. In this case, the excise duty evaded was B$24,800. This would be from B$198,400 being the lesser amount or B$372,000 being the maximum amount.

5. I agree with the Prosecuting Officer that neither the fine nor the sentence of imprisonment in default of payment can be said to be excessive. I find them proper, in line with the penalty prescribed in the Excise Order 2006 and within the range of sentences passed in similar cases of this nature. See: ***Rosani binti Rabaha vs PP (HCCA No.14 of 2013); Norkidah binti Abu Bakar vs PP (HCCM No.10 of 2014); Liew Shauw Ming vs PP (HCCA No.14 of 2018)***.

6. I find the Magistrate has given her sufficient time to pay the fine. To allow her a longer grace period to pay the fine in order to accommodate the lower monthly instalments as she proposed would defeat and dilute the deterrent element of the sentence. I, therefore, dismiss the appeal.

PG DP HJH ROSTAINA BTE PG HJ DURAMAN
Judge, High Court
1st July 2020