

Mohamad Azmi bin Haji Nasar

and

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Motion No. 58 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 --- Notice of Motion --- leave to appeal for longer period of instalment payments

Cases cited:

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

Hj Asmali bin Hj Abdullah vs PP (HCCM of 2018).

Applicant in person.

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

JUDGMENT

Pg DP Hjh Rostaina, J

1. On 19th July 2018, the applicant 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 24th day of March 2014 at about 2040 hours, at the vicinity of the house address at No.29, Spg 268, Jalan Kecil Bukit Nibong, Tanjong Maya, Tutong in Brunei Darussalam, did have in your possession un-excisable goods, to wit:

1. 04 cartons x 10 packets x 16 sticks of Extreme Mild cigarettes
2. 07 packets x 16 sticks of Extreme Mild cigarettes
3. 06 cartons x 10 packets x 20 sticks of Era Black Menthol cigarettes
4. 06 packets x 20 sticks of Era Black Menthol cigarettes
5. 11 cartons x 10 packets x 20 sticks of Era Premium cigarettes
6. 01 carton x 10 packets x 20 sticks of Era Full Flavor 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.

Penalty under section 146(1)(i) of the Excise Order 2006

In the case of un-excisable goods, such goods being dutiable goods, for the first offence, to a fine not less than 6 times the amount of the excise duty or \$40,000 whichever is the lesser amount, and of not more than 20 times the amount of excise duty or \$40,000, 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.

2. Senior Magistrate Hajah Azrimah bte Haji Abdul Rahman sentenced him a fine of B\$7,000 or 7 months' imprisonment in default of payment. He was given 5 months grace period to settle the fine that is until 31st December 2018.
3. The admitted facts were that on 24th March 2014, the Narcotic Control Bureau of Tutong inspected a house at Kg Tanjong Maya and found contraband cigarettes which he intended for his own consumption and sell.
4. He sought leave to appeal out of time for a longer period of instalment payments. Under section 272(1) of the CPC, Cap 7 the appellant has 14 days from the time of sentence to file in his appeal. In this case DPP Dr Mohammad Hussin Ali bin Idris argued the Notice of Motion was filed on 6th December 2018, more than 4 months (140 days) out of time. The explanation given was his lack of awareness of the time provisions for appealing.
5. He further objected to the applicant's application as the 5 months grace period allowed by the Senior Magistrate is reasonable and to allow for a longer grace period of payment would not only defeat and dilute the deterrent element of the sentence but would also be an administrative burden to the Court.
6. The applicable principles in considering such an application are well established in ***Zulkifli bin Puasa and others vs PP (1985)1 MLJ 461***, where Sir Alan Huggins JA, delivering the judgment of the court said at page 462, "*there are two factors to be considered for an extension of time; (i) the length of the delay and whether it can be satisfactorily explained, and (ii) whether the out of time application is likely to succeed.*"
7. I turn to the appellant's case. He is aged 44, married with one child from previous marriage. He just remarried and has gained employment in September 2018, earning B\$500 monthly. He has no previous conviction. That this was an old offence that was committed in 2014. His remorse is reflected in his efforts to pay the fine even though he has limited means.
8. 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.
9. 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.*"
10. 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