

Nur Istiqamah Binti Puteh

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Motion No. 59 of 2018)**

Steven Chong, C.J.

7 March 2019

Payment of fine by monthly installments.

Applicant unrepresented.

DPP Nor'adliatul Hidayah Binti Hj Mohd Zaidi for the Public Prosecutor/Respondent.

Case cited:

Ang Suat Goh v Public Prosecutor [2011] 2 JCBD 11

Steven Chong, C.J. (ex tempore):

On 24 October 2018 in the Magistrate's Court the applicant pleaded guilty to the unlawful possession of cigarettes contrary to section 146(1)(d) of the Excise Order 2006.

The Magistrate imposed a fine of \$33,200 or 14 months' imprisonment in default of payment. The applicant was given a period of 6 months to pay.

This is an appeal for the fine to be reduced and for more time to pay. The applicant who is 29 years old is a single parent of a special needs child aged five. She is employed as a clerk in the private sector.

A total of 17 cartons of cigarettes were found by customs officers in the applicant's Mazda car at her house on the afternoon of 23 October 2018. The applicant admitted to the customs officers that the cigarettes belonged to a man named "Amat" and she was selling them in return for a "commission".

The excise duty of the cigarettes evaded amounted to \$1,660. As the applicant had previously been convicted of a similar offence in 2015 the court was required to impose a fine of not less than 20 times the amount of excise duty pursuant to section 146(1)(ia) of the Excise Order 2006.

There is no merit in the appeal for the fine to be reduced. The fine imposed by the Magistrate is the mandatory minimum fine having regard to the amount of the excise duty evaded.

However, the appeal for an extension of time to pay the fine is on a different footing. In appropriate cases the court may allow the offender to pay a fine by installments and there is nothing wrong in principle in allowing a long period to pay having regard to the nature of the offence and the nature of the offender: see *Ang Suat Goh v Public Prosecutor* [2011] 2 JCBd 11.

The applicant says she was driven to commit the offence to “feed her child and sister”. Turning to crime because of financial hardship cannot be condoned. But considering the applicant is a single parent and primary caregiver of a young child with special needs, I think justice will be better served by giving her an opportunity to pay. The DPP indicated that allowing the applicant a period of 2 to 3 years to pay would be reasonable. The applicant says she can afford to pay \$900 monthly. This means a period of 37 months to pay which is reasonable in the circumstances.

I therefore allow the appeal against sentence to the extent that the fine is to be paid by monthly installments of \$900 from the end of this month and in default of payment of any one installment the applicant will serve the default term of imprisonment ordered by the court below.

DATO PADUKA STEVEN CHONG
Chief Justice