Mohammad Arif Bin Haji Mesari [D2]

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 3 of 2025)

Haji Abdullah Soefri bin POKPSM DSP Haji Abidin, J.C.
Date of Ruling: 17th July, 2025.

Headnote: Criminal Law – possession of unexcisable goods – section 146 (1)(d) Excise Order – Appeal Dismissed

Appellant/Defendant In Person.
DPP Syazwani Binti Jumat for the Public Prosecutor/Respondent.

Cases cited:
Rosani Binti Rabaha v Public Prosecutor [HCCA 14 of 2013]
Norkidah Binti Abu Bakar v Public Prosecutor [HCCM 10 of 2014]
Aisah binti Mohd Zaini v Public Prosecutor [HCCA No. 28 of 2011]
Sepiah binti Hj Sa'at v Public Prosecutor [HCCA No. 29 of 2011]
Pengiran Saiful Rizal Bin Pg Azahari Vs P.P [High Court Criminal Motion No. 7 of 2022]
Ak Abdullah Bin Pg Jaafar Vs P.P [High Court Criminal Motion No. 5 of 2023]

RULING

Haji Abdullah Soefri, J.C:

This is a Criminal Appeal filed by the Appellant (Defendant) against the sentence imposed on the Defendant in the Magistrates' Court on the 28th January 2025. The Notice of Appeal was filed on the 4th February 2025.

BACKGROUND

The Appellant is facing with two (2) charges for offence under Section 146(1)(d) of the Excise Order, 2006. For the first charge the penalty is punishable under Section 146(1)(ia) of the Order and for the second charge the penalty is punishable under section 146(1)(i) of the same.

The first charge is related to the possession of unexcisable goods to wit Vape, E-cigarettes and Vape juices and the total excise duty evaded was BND$2,914 and the second charge is related to the possession of unexcisable goods to wit vape accessories and the excise duty evaded was BND $1,120.

The Defendant pleaded guilty to both charges and was sentenced for the first charge to a fine of BND$29,140 in default of 15 months' imprisonment and for the second charge to a fine of BND$8,896 in default of 8 months' imprisonment. The Magistrate ordered for the sentences to run consecutively and the total sentence on the Defendant is a fine of BND$38,036 in default of 23 months' imprisonment

The Magistrate gave a grace period 6 months to pay the fine and the final date to pay all the fine is on the 28th July 2025.

GROUNDS OF APPEAL

The Defendant in his notice of appeal wrote that he is appealing for the fines to be reduced and for the grace period to be extended. He also wished that he can pay the fine in monthly instalment. He is appealing for the grace period to be extended to 2 to 3 years.

He informed to the Court that he is working in the private sector and his income is not enough as he had other commitments such as household expanses, contribution to his wife and other expanses. He told the Court that he is earning a gross salary of about BND $1100 per month. He also promised that he will not repeat the offence again. He also informed to this Court that his wife is working as a sales assistant in the private sector.

THE LAW

Sections 271 of the Criminal Procedure Code, Cap 7 provides as follows:

> *"Dissatisfied person may appeal*
>
> *271. Except as provided for in section 275, the accused person, the complainant or the Public Prosecutor, if he is dissatisfied with any judgment, sentence or order pronounced by any Magistrate in a criminal case or matter to which he is a party, may appeal to the High Court against such judgment, sentence or order for any error in law or in fact, or on the ground of the excessive severity or of the inadequacy of the sentence.*

PROSECUTION SUBMISSION

For the first charge under section 146(1)(d) and punished under Section 146(1)(ia) of the Excise Order, the penalty is as follows:

a. A fine of not less than 8 times the amount of excise duty or $5000 whichever is the greater amount; and
b. Not more than 15 times the amount of the excise duty or $50,000, whichever is the greater amount.

The Prosecution submitted that based on the above, the range of penalty the Magistrate can impose for evasion of excise duty of $2914 is between $23,312 ($2914 x 8) as the minimum and $50,000 as the maximum as $50,000 is greater than ($2914 x 15 = $43710)

For the second charge under section 146(1)(d) and punished under Section 146(1)(i) of the Excise Order, the penalty is as follows:

a. A fine of not less than 6 times the amount of excise duty or $40,00 whichever is the lesser amount; and
b. Not more than 20 times the amount of the excise duty or $50,000, whichever is the greater amount.

The Prosecution submitted that based on the above, the range of penalty the Magistrate can impose for evasion of excise duty of $1112 is between $6672 ($1112 x 6) as the minimum and $40,000 as the maximum as $40,000 is greater than ($1112 x 20= $22,240)

The Prosecution submitted that the sentence imposed by the Magistrate of a fine of $38,036 is not manifestly excessive and it is appropriate and consistent with the penalty prescribed in the Excise Order. It is further submitted that in relation to the first charge the multiplier of 10 was used by the Magistrate and for the 2nd Charge a multiplier of 8 was used, The Prosecution submitted that the fine imposed is within the sentencing range for offences of this nature and is not manifestly excessive.

The Prosecution submitted that the default sentence imposed by the Magistrate is proper and in accordance to section 132 of the Excise Order 2006 and not manifestly excessive.

The Prosecution submitted that the 6 months' grace period granted by the Magistrate for the payment of the fine is reasonable and proper.

The Prosecution highlighted the case of ***Rosani Binti Rabaha v Public Prosecutor*** **[HCCA 14 of 2013]** where the Court made the following references to the deterrent objective of fines and stated as follows:

> *"…Fines had to be of an amount which the appellant could reasonably pay given his financial means. On the other hand, the fines had to be fixed at the level which would be sufficiently high to achieve the dual objectives of deterrence, in terms of deterring both the appellant and other importers."*

The Prosecution also highlighted the case of *N**orkidah Binti Abu Bakar v Public Prosecutor*** **[HCCM 10 of 2014]** where Dato Seri Paduka Hj Kifrawi, the then Chief Justice highlighted that giving the Appellant more time to pay would create further financial burden on the Appellant and administrative burden for the Court to monitor compliance.

Dato Seri Paduka Steven Chong, the Chief Justice, in ***Aisah binti Mohd Zaini v Public Prosecutor*** **[HCCA No. 28 of 2011]** and in ***Sepiah binti Hj Sa'at v Public Prosecutor*** **[HCCA No. 29 of 2011]** where his Lordship referred a passage from '*Sentencing Principles in Singapore*' under the heading '*Disadvantages of a lengthy instalment period*' which provides as follows:

> *"..a lengthy period for the payment of a fine is undesirable. It can become psychologically oppressive for the offender to constantly have to [a] live under the threat of imprisonment being*

> *imposed at any time in default of payment of the fine, and [b] worry about finding the means to pay the fine. Recovery of the fine over a long period may also be administratively challenging."*

CONCLUSION

I will deal with the fines that are imposed by the Magistrate below. In ***Pengiran Saiful Rizal Bin Pg Azahari v P.P***, the Court has established that cases heard in High Court of this nature involves a multiplier of between 8 to 10. In the present case, the Magistrate imposed a multiplier of 10 for the first charge and a multiplier of 8 for the second charge. This is after he had correctly taken into account of the mitigating and aggravating factor. The Magistrate is also correct by imposing a consecutive sentence to the first and the second charge. The fines that are imposed by the Magistrate are appropriate and not manifestly excessive. The fines that was imposed by the Magistrate are well within the established tariff sentencing range based on a multiplier of 8 to 10 to the amount of duty evaded as the financial penalty to be imposed on a first-time offender, after an early guilty plea for an offence under Section 146(1)(d).

With regards to the in-default sentence, I am in agreement with the Prosecution that the in-default sentence are proper and in accordance to section 132 of the Excise Order.

In summary, the fines imposed by the Magistrate is not manifestly excessive and are in accordance with the range of fines commonly imposed for these offences, similarly to the in-default prison sentences which are in line with those passed in similar cases for this offence.

The next ground of appeal is for the extension of the grace period where the Defendant proposed for the grace period to be extended to 2 to 3 years and to pay by monthly instalment.

Going back to the main objective of sentencing. The main objective of sentencing is to deter the Defendant and would be offender from committing such offence. Sentencing must also take into account of public interest. The question now is whether extending the grace period and to allow the Defendant to pay by monthly instalment will dilute the deterrent effect and would it be in the public interest?

Are the grounds that the Defendant provided to this court for the application of the extension of time are exceptional? The Defendant informed the Court that he has not had enough money to pay the fine within the time given by the Magistrate. He also informed the Court that he has other commitments and other expanses to pay for his family.

I agree with Dato Seri Paduka Hj Kifrawi the then Chief Justice in *N**orkidah Binti Abu Bakar v Public Prosecutor*** **[HCCM 10 OF 2014]** where Dato Kifrawi stated that giving the Appellant more time to pay would create further financial burden on the Appellant and administrative burden for the Court to monitor compliance.

It is worth to highlight again what was said by the Chief Justice, Dato Seri Paduka Steven Chong in ***Aisah binti Mohd Zaini v Public Prosecutor*** **[HCCA No. 28 of 2011]** and in ***Sepiah binti Hj Sa'at v Public Prosecutor*** **[HCCA No. 29 of 2011]** where his Lordship referred a passage from '*Sentencing*

Principles in Singapore' under the heading 'Disadvantages of a lengthy instalment period' which provides as follows:

> *"..a lengthy period for the payment of a fine is undesirable. It can become psychologically oppressive for the offender to constantly have to [a] live under the threat of imprisonment being imposed at any time in default of payment of the fine, and [b] worry about finding the means to pay the fine. Recovery of the fine over a long period may also be administratively challenging."*

To allow the Defendant to extend the grace period and to pay by monthly instalment will dilute the deterrence effect and also will send a wrong signal to the public and would be offenders and it will not be in the public interest for the Defendant to be given any leniency in his punishment as the facts of the case is very disturbing whereby he is involved in the selling and distributing of Vapes and its products to people at large not only the old but young people. He has blatantly exposed the people to the dangers of vapes which are harmful to them and has defeated the Government vision to live healthy lifestyle and to have a healthy nation.

The defendant has failed to give any exceptional reason for the grace period to be extended as financial hardship and hardship to the family are not exceptional reasons and these reasons cannot be accepted as a ground for leniency.

Having has said all the above and considering the matters that the Defendant has put before this Court that I have highlighted I do not see any reason why this Court should disturb the Magistrate's sentencing and grace period which is not manifestly excessive and the grace period of 6 months is appropriate and reasonable and to give a longer grace period to the Defendant, as what the Chief Justice, Dato Seri Paduka Steven Chong had said in ***Ak Abdullah Bin Pg Jaafar v P.P*** **[High Court Criminal Motion No. 5 of 2023],** "*would be inimical to the deterrence objective of the sentence."*

Appeal is dismissed and the Magistrate sentence and orders remain. Defendant has until 28th July 2025 before 3pm to pay the full fine of BND$38,036, and failure to pay the full fine, the Defendant will serve the in-default sentence of 23 months' imprisonment

Appeal is dismissed

HAJI ABDULLAH SOEFRI BIN POKSM DATO SERI PADUKA HAJI ABIDIN
Judicial Commissioner