

**Norazrin bin Haji Ahad**

AND

**Public Prosecutor**

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**(High Court of Brunei Darussalam)  
(Criminal Motion No. 27 of 2021)**

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Hj Abdullah Soefri bin POKSM DSP Hj Abidin, J.C.

**11<sup>th</sup> January 2022**

*Criminal law --- Section 146(1)(d) of the Excise Order 2006 – Extension of time to pay fines.*

Appellant In Person.

DPP Siti Khalilah binti Hussin for Public Prosecutor.

**Cases referred to:**

*Zulkifli Bin Puasa and Others vs PP* (1985) 1 MLJ 461

*Ang Suat Goh vs PP* (HCCA No. 12 of 2011)

*Jason Toh Hon Heng vs PP* (CA No.4 of 2012)

*Siti Zubaidah Binti Marsal and PP* (Criminal Appeal No. 36 of 2015)

**RULING**

**Hj Abdullah Soefri, JC:**

On 30<sup>th</sup> of May 2021, the Appellant was brought before the Magistrate Court and preferred with a charge under section 146(1)(d) of the Excise Order 2006 for possession of unexcisable goods,

- 1) 50 cartons x 10 packets x 20 sticks of Era Black Cigarattes.
- 2) 02 cartons x 10 packets x 16 sticks of Djarum Super Cigarattes.

The Appellant pleaded guilty to the said charge and agreed and admitted to the Statement of Facts which is briefly as follows:-

On 7<sup>th</sup> day of January 2021 at about 2030 hours, the Customs Preventive Officers of BSB stopped a vehicle with registration number BP1310, Mitsubishi Pajero in the vicinity of a house addressed at No. 97 Kampung Menengah, Temburong in Brunei Darussalam which at that time the vehicle was towing a Fiberglass boat (black/yellow). The vehicle was driven by the Appellant.

As a result of the inspection of the said vehicle and inside the fibreglass boat the Customs Preventive Officers of BSB found the following items;

- 1) 50 cartons x 10 packets x 20 sticks of Era Black Cigarettes.
- 2) 02 cartons x 10 packets x 16 sticks of Djarum Super Cigarettes.

During the investigations on the 23<sup>rd</sup> January 2021 at about 0930 hours, the Appellant admitted that all the cigarettes that were found kept inside the fibreglass boat compartment belong to him which he had purchased for a total price of BND\$430.

The Excise Duty to be paid for all the cigarettes is BND\$5,160.

The Appellant was sentenced on the same day (30<sup>th</sup> March 2021) by the Magistrate for a fine of \$42,000 in default of 14 months imprisonment and was given a grace period until 28<sup>th</sup> of September 2021. The Court below ordered for the cigarettes forfeited by the state and to be destroyed and the car and boat were ordered to be returned to the Appellant.

Before me, the appellant appealed for the grace period to be extended and to pay the fines in instalments of \$300 per month.

The Appellant had informed the Court that he has been making payments towards the fine imposed and showed the Court receipts of payments.

F 5268577 for \$300  
F 5267956 for \$100  
F 5267401 for \$200  
F 5266874 for \$200  
F 5266746 for \$900.

The Appellant only filed the notice of Appeal on 21<sup>st</sup> of September 2021. There was about 6 months delay in filing the notice of appeal; and thus, a criminal motion was filed for an application for leave for extension of time of appeal.

In ***Zulkifli Bin Puasa and Others vs Public Prosecutor (1985) 1 MLJ 461***, the Court of Appeal stated there are two factors that need to be considered for an application for extension of time.

- 1) The length of the delay and whether it can be satisfactorily explained, and
- 2) Whether the out of time application is likely to succeed.

It is not the duty of the Court at this stage to go into actual merits of the grounds of appeal but merely to examine whether they are likely to succeed.

### **Delay**

It is not disputed that there is a delay of about 6 months between the sentence imposed and when the appellant filed the notice of appeal.

The appellant informed the Court that the reason why he did not file the notice early was because he did not know of the procedure. However, he failed to answer the Court on why he did not enquire much earlier.

The Appellant informed the Court that he wants to pay in instalments around \$300 per month. He also informed the Court that he is employed now as a fisherman and doing grass cutting at people's houses.

The Respondent (Prosecution) submitted to the Court that the fine imposed on the Appellant is proper and in line with the penalty prescribed in the order. The Magistrate took a multiplier of 8.13 which is close to the minimum sentence.

The grace period of nearly 7 months given by the Magistrate is proper.

The Appellant's sources of Income from cutting grass and fishing, the Respondent submitted that the prospect of the applicant settling the fine with his present financial situation is improbable. The Applicant's proposal of paying \$300 per month will take 11 years for him to fully settle the fine.

Respondent further submits that to give the applicant more time would be a financial burden to him and also will cause further administrative burden to the Court to monitor such payment especially if it were to take 11 years based on his proposal.

Respondent further submits that;

*"If the Court is minded to grant the applicant for an extension of time, we respectfully that to proposal' should be reasonable and for a period of a reasonable time. We respectfully submit that it shouldn't be no longer than 4 to 5 months."*

The Question that is needed to be addressed by this Court is as follows;

- 1) Whether the delay can be satisfactorily explained, and
- 2) Whether the out of time application is likely to succeed.

The explanation given by the Appellant on the delay is not a satisfactory explanation as the Appellant did not take any initiative to enquire on the procedure knowing that he did not know the procedure.

Having had determined that the explanation given is not a satisfactory explanation, the question now is whether the out of time application is likely to succeed.

In **Jason Toh Han Heng vs Public Prosecutor**, Court of Appeal application for leave No.4 of 2012, 10<sup>th</sup> May 2012, it was held as follows:-

*"The application must demonstrate that the delay can be satisfactorily explained and that he has an arguable case likely to succeed on the appeal. Much the most important of these is showing that there is an arguable case and the appeal has at least a reasonable chance of success. Leave will not be*

*granted in the absence of an arguable case even if the delay is excusable or it is so short that it is just to overlook it."*

In **Ang Suat Goh vs Public Prosecutor (HCCA No. 12 of 2011)**, DP Steven Chong, Ag CJ then stated:-

*"In appropriate cases, the court may allow the offender to pay a fine by instalments and there is nothing wrong in principle in allowing a long period to pay providing it is not an 'undue burden' and 'too severe a punishment' having regard to the nature of the offence and the nature of the offender. One of the objects of a fine is to remind the offender that what he has done is wrong, and the fact that he is being reminded of that after two months is no bad thing at all".*

I agree with the Respondent's submission that to allow the Appellant to pay \$300 per month as proposed by the Appellant will take 11 years for him to fully settle the fine and this will incur a burden to the appellant and also impose a burden to the administration of the Court to monitor the payment for a period of 11 years.

I would like to quote Justice Hairol Arni Majid in **Siti Zubaidah Binti Marsal and Public Prosecutor (Criminal Appeal No 36 of 2015)** where his Lordship said:-

*"What struck me the most about custom cases is now 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 is 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 judgement debtor in a civil court knowing that they do not have the means to pay them but with the expectation that it would in to end be accepted by the Court. "*

The fine imposed by the Magistrate below is not excessive and it is within the normal tariff where the multiplier that was used was a multiplier of 8.13 and the reason given by the Appellant for extension of time to pay or to pay by instalment has no chance of success.

Having regard to the Appellant's personal circumstance and the need to preserve the deterrence objective, I will not extend the grace period as suggested by the Respondent of 4 months to 5 months but only extend the grace period to 24<sup>th</sup> of February 2022 so as to indicate to others that the punishment by the Court below is a court punishment and not a civil debt. Further, the court below has given the Appellant more than an ample grace period of nearly 7 months to settle the fine.

This court as an act of clemency extends the time for the Appellant to pay the remaining balance of the fine by 24<sup>th</sup> of February 2022 and failure to fully pay the fine, the Appellant is to serve the default sentence.

**HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN**  
Judicial Commissioner

