

Rosni Binti Sabtu

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Motion No. 48 of 2020)

Haji Abdullah Soefri, JC

29th December 2020

Criminal Law – possession of cigarettes – pleaded guilty – sentenced – fine – appeal for extension of time to pay fine – leave for appeal out of time – granted – no objection for extension of time to pay fine – appeal allowed

Applicant in person and unrepresented.
DPP Adliatul Hidayah for the Respondent.

Cases cited:

Zulkifli bin Puasa and others v Public Prosecutor (1985) (MLJ 461)

Ang Suat Goh v Public Prosecutor (CA No. 12 of 2011)

R v Olliver and Olliver (1989) (11 Cr App RCJ)

Sania bin Haji Junidi v PP (Criminal Appeal No. 25 of 2018)

JUDGMENT

Haji Abdullah Soefri, JC:

The Defendant, Rosni binti Sabtu was charged on 8th April 2020 with the following charge:

That you, on the 4th day of April 2020, at about 1550hrs, at vicinity No.7 Simpang 2 Jalan Paya Belambang Perpindahan Bukit Beruang, Tutong in Brunei Darussalam, did have in your possession unexcisable goods, to wit:

- 1. 18 cartons x 10 packets x 20 sticks of Era Black Menthol cigarettes*
- 2. 10 cartons x 10 packets x 20 sticks of Era Premium Cigarettes*
- 3. 03 cartons x 10 packets x 20 sticks of Era Full Flavor Cigarettes*
- 4. 05 cartons x 10 packets x 16 sticks of Extreme Mild Menthol Cigarettes*

5. 30 packets x 20 sticks of Era Black Menthol cigarettes
6. 35 packets x 20 sticks of Era Premium Cigarettes
7. 08 packets x 20 sticks of Era Full Flavor Cigarettes
8. 18 packets x 16 sticks of Extreme Mild 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.

She pleaded guilty and admitted the following statement of facts:

1. The defendant is Female Bruneian, married, unemployed and currently resides at No.7 Simpang 2 Jalan Paya Belambang Perpindahan Bukit Beruang, Tutong in Brunei Darussalam.
2. On the 04th day of April 2020, at about 1550 hours, the Customs Preventive Officers made an inspection to a house at vicinity No.7 Simpang 2 Jalan Paya Belambang Perpindahan Bukit Beruang, Tutong, in Brunei Darussalam due to public information regarding customs offence.
3. Further inspection that were made by the Customs Preventive officers, the following items were found:

No	Description	Remark
1.	18 cartons x 10 packets x 20 sticks of Era Black Menthol cigarettes	Found inside the said house
2.	10 cartons x 10 packets x 20 sticks of Era Premium Cigarettes	
3.	03 cartons x 10 packets x 20 sticks of Era Full Flavor Cigarettes	
4.	05 cartons x 10 packets x 16 sticks of Extreme Mild Menthol Cigarettes	
5.	30 packets x 20 sticks of Era Black Menthol cigarettes	
6.	35 packets x 20 sticks of Era Premium Cigarettes	
7.	08 packets x 20 sticks of Era Full Flavor Cigarettes	

8.	18 packets x 16 sticks of Extreme Mild Menthol Cigarettes	
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4. The defendant admitted to the customs preventive officer that all the cigarettes found was belonged to her.
5. The defendant, together with all the items was detained for further investigation. Notice of Seizure was duly issued for all the seized items.
6. Upon investigation, the defendant admitted that she had purchased all the cigarettes from an unknown person at Sungai Basong Carpark, Tutong.
7. The defendant also admitted that all the seized items belonged to her and intended to sale it.
8. The Excise duty to be paid for the cigarettes are:

Cigarettes: 8\$4,374.00 (Brunei Dollars: Four Thousand Three Hundred and Seventy-Four only)

9. The Prosecution is applying for all the items listed in the Notice of Seizure to be forfeited to the State.
10. On record, the defendant has no previous convictions under the Excise Order 2006.

The Defendant was convicted and was imposed a fine of \$35,000 in default of 14 months' imprisonment and was given until the 30th November 2020 to make full and final settlement of fine. All the seized items to be forfeited and destroyed.

She filed the Notice of Criminal Motion on 24th November 2020 and I assume, so as to apply for leave for appeal out of time. As usual, she has to give good reason for not appealing within time. Even if she has a good reason, the Defendant has to convince the Court that her appeal is likely to succeed. (See *Zulkifli bin Puasa and others vs Public Prosecutor* [1985] [MLJ 461]).

She informed the Court and not disputed by the Prosecution that she had made payment a total of \$19,600 where the payment are as follows:

- 1) 1st payment \$50 on 29th April 2020
- 2) 2nd payment \$12,500 on 22nd June 2020
- 3) 3rd payment \$7000 on 18th July 2020
- 4) 4th payment \$50 on 31st October 2020

She plead to the Court to pay the balance of the fine of \$15,400 by paying \$50 per month.

She informed the Court that this is because she has small children to take care of and to pay household expenses and she is dependent on her husband's pension who has retired and unemployed now.

Prosecution objected to the said proposal because if she pays \$50 per month; it would take more than 25 years to complete the payment.

Prosecution submitted that 25 years is too long and would dilute the element and the purpose on sentence and would add administrative burden to the government and Defendant herself.

Prosecution further added that since she has made effort to pay and looking into her circumstances, they will not object if the grace period is extended to another 7 months.

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

"In appropriate cases the Court may allow the offender to pay a fine by instalment 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 over the months is not a bad thing at all".

He also referred to *R v Olliver and Olliver* (1989) 11 Cr App R(5) where Lord Jane, CJ, delivering the judgment, *"having reviewed the authorities, concluded that "a two years 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"*.

Having taken into consideration of the Prosecution proposal which is very commendable that they are not objecting if the grace period is extended to another 7 months, Notice of Motion to apply leave to appeal out of time is granted and having had heard all parties and the need to preserve the deterrence objective and personal circumstances; (see *Sania bin Haji Junidi vs Public Prosecutor*, Criminal Appeal No.25 of 2016) and that the Appellant is a first offender, pleaded guilty at the first instance, had made 56% of the total fine imposed and taking into account of the suggestion by the Prosecution, I allow the appeal to extend the time of payment of fine to another 7 months.

The payment of the balance of the fines of \$15,400 will be paid equally in 7 instalments which stretches to 7 months as follows:

1st instalment: by 31st January 2021 - \$2200

2nd instalment: by 28th February 2021 - \$2200

3rd instalment: by 31st March 2021 - \$2200

4th instalment: by 30th April 2021 - \$2200

5th instalment: by 31st May 2021 - \$2200

6th instalment: by 30th June 2021 - \$2200

7th instalment: by 31st July 2021 - \$2200

I would like to warn the Defendant that if she fails to pay any one of the instalments within the time stated above, she will have to pay the whole balance in one lump sum and failure of that she will serve the remaining default sentence as imposed by the lower Court.

All other Magistrate's order still remain.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner