

**PUBLIC PROSECUTOR**

AND

**HJ KIFLI BIN HJ NUDIN**

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**(High Court of Brunei Darussalam)  
(Criminal Appeal No.25 of 2007)**

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Datin Paduka Hajah Hayati, J  
**5<sup>th</sup> March, 2009.**

Criminal law - appeal against acquittal and sentence – charges of knowingly submitting false invoices intended to mislead the principal - inadequate discount for gross delay of more than 4 years from investigation to judgment - appeal allowed - Prevention of Corruption Act (cap 131) S 6(c)

DPP Pg Nina Jasmine PLKDR Pg Hj Bahrin for Public Prosecutor  
Mr Sheikh Noordin bin Sheikh Mohammad (M/S Sheikh Noordin Mohammad Advocates and Associates) for defendant

**Cases cited-**

*Hamid Ibrahim v PP* [1965]86 BLR 264

*Jinan Hj Kasim v Public Prosecutor*, Criminal Appeal No.11 of 2007

*PP v Arshad bin Hj Md Zain* [1992] BLR at 171

**Datin Paduka Hajah Hayati, J:**

The defendant, whom, at the material times was the Manager of College Residence, Student Affairs Section of University Brunei Darussalam, was charged with 2 counts of knowingly submitting false invoices intended to mislead his principal, under s6(c) of the Prevention of Corruption Act, cap 131.

The charges alleged that the defendant ‘inflated’ the amounts claimed for the Female Hostel Canteen for the month of August 2002 and October 2002 submitted by Tinis Restaurant.

The defendant was charged on 28<sup>th</sup> July, 2005. He was suspended on half pay since the investigation which began on 12<sup>th</sup> December, 2002. He was born on 4<sup>th</sup> August, 1950. On 5<sup>th</sup> August, 2005, he commenced his retirement having reached the

age of 55. He will definitely not received his pension in view of the conviction. At the time of this appeal, he is more than 58 years old.

The defendant initially pleaded not guilty to both charges. Trial commenced before the Senior Magistrate on 13<sup>th</sup> February, 2006 and concluded only on 25<sup>th</sup> August, 2007. Judgment was fortunately swiftly delivered on 5<sup>th</sup> September, 2007. The Senior Magistrate convicted the defendant on the 1<sup>st</sup> charge and acquitted him of the 2<sup>nd</sup> charge. The defendant was sentenced to 12 months imprisonment for the 1<sup>st</sup> charge. The Senior Magistrate remarked that he would have imposed 18 months imprisonment but in view of the 33 months delay from investigation (December 2002) until he was charged in Court (28<sup>th</sup> July 2005) he discounted it to 12 months to take into effect from the date of sentence. The Deputy Public Prosecutor filed an appeal against the acquittal and the ‘manifestly inadequate sentence’ of the first charge. The defendant cross-appealed against the ‘severity’ of the sentence of the first charge. The application to stay sentence pending the outcome of the appeal was granted by the Senior Magistrate.

Fast forward to the appeal before me on 5<sup>th</sup> March, 2009, more than 6 years from the investigation and more or less 15 months since the conviction!

Before me, today, the defendant through his counsel made a considerable concession on the Public Prosecutor’s appeal against acquittal on the second charge, accepting fairly that the Senior Magistrate ought to have convicted the defendant of the 2<sup>nd</sup> charge, there being enough evidence to convict him according to the law and asked the Court to record a conviction and for him to be sentenced as allowed to me by s284(c) of the Criminal Procedure Code (CPC). That being the case, I formally entered a conviction against him on the 2<sup>nd</sup> charge. However, Mr Sheikh Nordin, counsel for the defendant proceeded with his appeal against sentence on the first charge and brought my attention to an appeal decided by me in *Jinan Hj Kasim v Public Prosecutor*, Criminal Appeal No.11 of 2007, Judgment dated 24<sup>th</sup> October, 2007, where I had allowed an appeal against sentence by the appellant, a custom officer who was convicted of 2 charges under s6(c) of the same Act whereby I reduced the original sentence of 12 months on each charge to run consecutively to a sentence of 9 months and 6 months, to run concurrently, on account of a delay of more than 4 years. Mr Sheikh Nordin, who also represented the appellant in that case urged the Court to adopt the same consideration in this case.

The Deputy Public Prosecutor, in view of the defendant’s concession on the 2<sup>nd</sup> charge proceeded only to argue that the 12 months sentence imposed for the first charge is an appropriate sentence in the circumstances of the case and reminded the Court to look for ‘special circumstances which would justify a sentence below the usual minimum of 12 months’ (per Roberts CJ in *PP v Arshad bin Hj Md Zain* [1992] BLR at 171).

The Senior Magistrate, at the time of sentencing did rightly take into account the delay of more or less 33 months from the time when the defendant was first investigated to the date the defendant was brought to Court. He took 18 months as the starting point and giving about 6 months discount for the said delay, imposed 12 months imprisonment, which approach, in my opinion cannot be criticized, since the case did

go for a lengthy trial. Counsel for the defendant and the Deputy Public Prosecutor fairly did not take issue with the Senior Magistrate's approach at this appeal. One material point however which appears to have escaped the Senior Magistrate's consideration is the very important fact that it had further taken more or less 20 months from the date of trial to Judgment. This fact, in my opinion, is something which should deserve further discount on the sentence. If the Senior Magistrate, for some reasons feel that it should not, he did not mention the reasons in his sentencing.

The unhappy chronology unfortunately persisted and it took a further 15 months until this appeal is heard. Irrespective of the reasons for the delays or where the blame lies, looking at the chronology of the case, there is undisputedly an appalling delay which on its own, must have placed an unfair and tremendous strain on the defendant and his family.

The seriousness of the offence under s6(c) of the PCA is not in issue and is well articulated in various cases, particularly in *Hamid Ibrahim v PP* [1965]86 BLR 264. However, turning back to this case, this matter had been with the defendant since 2002. He was suspended on half pay since the investigation. He is now more than 58 years old and has since retired. He had given more than 30 years of service. He will most definitely lost his pension. Although it can be said that he had himself brought upon all these unhappy consequence by his own dishonesty, but I believe, that in the interest of justice, this matter should not be allowed to prolong. The defendant himself had taken the wise course of conceding on the appeal by the Public Prosecutor on the acquittal, thus saving further delays and time and bringing closure to the matter which had been with the defendant and his family since 2002.

I therefore find it appropriate in the circumstances to allow the appeal of the defendant and gave a 3 months further discount for the 20 months delay from trial to conclusion which was not considered by the Senior Magistrate, thereby reducing the sentence of 12 months imprisonment imposed by the Senior Magistrate for the first charge to 9 months imprisonment.

With regard to the appeal against acquittal, the defendant having conceded, I allowed the Public Prosecutor's appeal and entered a conviction on the second charge against the defendant as allowed to me under s284(c) of the CPC. I passed a sentence 9 months imprisonment on the second charge and ordered the sentence on the second charge to run concurrently with the first charge. I looked back at the total sentence of 9 months, the appalling delay which this case was subjected to plus the other hardship the defendant and his family had suffered, to determine, as a whole, whether the 9 months imprisonment is an adequate punishment for his two acts of dishonesty and I have no doubt, that it is.

**DATIN PADUKA HJH HAYATI**  
Judge, High Court