

KAMINELI VUNISA *v.* THE POLICE

[Appellate Jurisdiction (Carew, P.J.) May 4th, 1949]

S. 208 C.P.C.—power of amendment—whether appeal lies from order made by Magistrate during trial.

The accused was charged with a number of offences. Before the close of the case for the prosecution the prosecutor asked the Magistrate to amend the charges in accordance with the provisions of section 208 (1) of the Criminal Procedure Code. Counsel for the defence objected but the 1st Class Magistrate at Ba allowed the amendments.

Counsel for the defence then filed notice of appeal against the order.

On appeal by the accused.

HELD.—(1) No appeal lay at that stage of the proceedings.

(2) An order of the Magistrate to be appealable must be a final order.

[EDITOR'S NOTE.—Section 208 (1) of the Criminal Procedure Code reads as follows:—

“ 208 (1) Where at any stage of the trial before the close of the case for the prosecution it appears to the Court that the charge is defective either in substance or in form, the Court may make such order . . . as the Court thinks necessary to meet the circumstance of the case.”]

The following comments were endorsed on the record before the hearing.

CAREW, P.J.—In my view no appeal lies at this stage. The order is an interim one. The order must be, in my view, an order made after conviction ; that is a final order. This order in the present case is not such a one.

No power to hear this appeal.

The case record was returned to Magistrate with instructions to continue the hearing.