

SALE

OF

GOODS ACT

LL.B. II Sem

MANEESHA SHARMA

Law Faculty

N.A.S. P.G. College

Meeerut.

"Risk prima facie passes with the property."

Sec-26 of the Act lays down the general principle that Risk prima facie passes with property.

1) Unless otherwise agreed, the goods, remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

2) But where delivery has been delayed through the fault of either buyer or seller, the goods are at the party in fault as regards any loss which might not have occurred but for such fault.

3) Nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party."

General rule. The provision that "risk prima facie passes with property" embodies the general rule as to who is to bear the loss after the passing of the property. As is evident from it, the risk passes with the passing of the property, i.e. when the property in goods passes to the buyer, the risk also passes to the buyer. The passing of risk is simultaneous to the passing

of property. But then as the words *prima facie* denote this general rule is not an inflexible rule. It is *prima facie* (on the face of it) and is subject to certain other conditions.

The section nowhere says that risk can pass to the buyer only after the property has passed to him. There are cases where risk passes without passing of the property; it would be so if there is an agreement, express or implied, between the parties or the usage of the particular trade to that effect, but if the buyer is to be made responsible for the risk before the property passes to him the inference must be clear.

It is prima facie. The rule is *prima facie* because passing of property is no test of passing of the risk. There is nothing to check the parties from contracting otherwise. They can contract that the risk will not pass till the time of delivery. They can stipulate any other period for the passing of risk. In other words, the two things, i.e. (i) passing of risk and (ii) passing of property may be treated separately by the parties to a contract and different times may be fixed for the two. Thus the

parties can agree themselves that although the property in goods remains with one party, the other party has to pay for them if the goods are lost.

Illustration A bids Rs 1,000 for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss is to be borne by the seller, but if the accident happens after the fall of hammer, loss is to be borne by A.

Case - Shashi Mohan v/s Noko Kristo 1978

In this case the defendant purchased 975 bales of rice. He paid earnest money and took part delivery of the rice. Before he could take delivery of the remaining rice, it was destroyed by fire. It was held that the buyer (the defendant) was liable for loss because the property in the whole rice had not passed to the defendant. The plaintiff was therefore held entitled to recover the balance of price from the defendant.