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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CRL.REV.P. 591/2018, CrI. M.A. 12689/2018 (Exemption)  
SH. MALKIAT SINGH

..... Petitioner

Through: Mr. M.B. Singh, Adv.

versus

PAROPKAR SINGH & ORS

..... Respondent

Through:

**CORAM:**  
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

% **17.07.2018**

This revision petition impugns an order dated 25.04.2018 upholding the dismissal of the petitioner's complaint by the Trial Court. It was the petitioner's case that the respondents had trespassed into his house in Delhi after breaking its lock. The lock was opened by a key-maker namely, Braham Singh- CW-3. However, in his testimony the Braham Singh failed to identify the accused persons. It is the petitioner's case that the key maker had admitted that he had broken open the outer lock of the door of the petitioner's property. However, the Court would note that further on in his testimony he had failed to identify the accused. The opening of the lock by itself would not incriminate the accused persons unless it is proved that the opening was done at their behest. This aspect has been dealt with in the impugned order as under:

*“Ld. counsel for the respondents has denied that the respondents ever trespassed in the alleged property by breaking the door of the house on 11.04.1998. The appellant himself went to local police on 19.04.1998 and ultimately a formal complaint was lodged in PS on 23.04.1998. Ld. Counsel argued that no pre charge evidence was recorded and notice under Sec. 453/34 IPC was sent to the respondents straightway which is highly perverse. The material prosecution witness, Raju, who sent the telegrams informing about the alleged incident to the appellant, was neither called in the witness box by the appellant nor the veracity of the telegrams proved. The appellant/CW-1 did not file any other evidence except Ex.CW1/1 in order to prove his possession over the said flat and even failed to file ration card, voter card with the address of said flat. During his cross examination, CW-1 stated that he has filed an unregistered Will Ex.CW1/1 but has no knowledge pertaining to the date and time when the said Will was executed. On 04.04.2009, appellant/CW-1 himself admitted that the Will Ex.CW1/1 was declared null and void by Sh. Sukhvinder Pal Singh Marar, Additional Collector, Hoshiyarpur in a mutation case of his village Khadala Sainiyar. Hence, the appellant miserably failed to prove its ownership and possession over the said flat. CW-2 Sardar Kuldeep Singh during his examination did not exhibit or produce any document and only affirmed the statement given by CW-1. CW-3 Brahm Singh, the key maker, during his examination failed to identify the accused and stated that no door was opened by the keys made by him. CW-3 stated that the alleged incident took place on 11.04.1998 at 2.30 pm whereas CW-2 has stated this time as 11.00-12.00 noon. Hence,*

*the statement of CW-3 are contradictory and cannot be relied upon.”*

The Appellate Court further reasoned as under:

*“Regarding other contentions raised by Id. counsel for the appellant, it is clear that Id. trial court passed the judgment in detail and discussed every aspect clearly. Ld. trial court has discussed every point in issue elaborately and made observations with citations. Ld. trial court clearly held that provisions of the Section for which accused persons have been charged are not fulfilled. Cases cited by the Id. counsel for the appellant are not applicable to the present matter. Each case has to be seen from its own facts and circumstances.”*

In view of the above, this Court finds no reason to interfere with the impugned order.

The petition is dismissed.

**NAJMI WAZIRI, J**

**JULY 17, 2018/acm**