**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL REVISION APPLICATION NO. 692 of 2004**

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KATHI BHUPAT MADHUBHAI
Versus
STATE OF GUJARAT

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Appearance:
MR. RAHUL R DHOLAKIA(6765) for the Applicant(s) No. 1
MR JK SHAH, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
**HONOURABLE MR. JUSTICE R. T. VACHHANI**

**Date : 12/12/2025**

**ORAL ORDER**
**(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. We have heard learned counsel Mr.Rahul Dholakiya and Mr.J.K. Shah, learned APP for the respective parties.

2. The petitioner came to be convicted for the offence of rape and he was sentenced to undergo two years imprisonment. By preferring the appeal before the Sessions Judge, the conviction being challenged by the accused. The Additional Sessions Judge, while dismissing the appeal, upheld the order of conviction. Against this, the present revision being filed by the accused. At the time of admission of the revision, by exercising powers conferred by virtue of Sections 397 and 401 of Cr.P.C., the learned Single Judge of this Court, on the aspect of inadequacy of the sentence, issued notice to the accused and directed the Registry to place the

matter before the Division Bench. Admittedly, pending the revision, the accused has undergone two years of his imprisonment and the present revision filed by the accused having become infructuous. However, on the issue of enhancement of sentence, the matter still pending for its adjudication.

3. Mr.Rahul Dholakiya, learned counsel by referring the case of **Nagarajan Vs. State of Tamilnadu (Criminal Appeal No.2892-93 of 2025, SC, dated 04.06.2025)**, contended that the High Court cannot exercise its revisional powers for enhancement of sentence and therefore, in the revision filed by the accused, the High Court cannot exercise its power under Section 397 read with Section 401 of Cr.P.C. and enhance the sentence awarded by the Court concerned.

4. Mr.J.K. Shah, learned APP for the respondent – State, opposing the contentions, submitted that there is no dispute about the ratio laid down by the Supreme Court, but the facts remain that the Trial Court has not properly exercised its discretion along accepted judicial lines and therefore, the sentence imposed by the Trial Court should be enhanced.

5. Having regard to the facts and circumstances of the present case, the issue falls for our consideration whether the High Court can exercise its revisional powers for enhancement of sentence ?

6. Our answer to the issue is in negative.

7. Reasons:

The issue of law with regard to powers of High Court for enhancement of sentence under Section 397 with Section 401 of Cr.P.C. being extensively dealt by the Supreme Court in the case of **Nagarajan (supra).** In Para-10 of the judgment, the Supreme Court held that the High Court while exercising the appellate jurisdiction, cannot act as a revisional court when no appeal or revision has been filed either by State, victim or complainant for seeking enhancement of sentence against the accused. In Para-11 of the judgment, the Supreme Court in clear terms has laid down that High Court cannot exercise its revisional powers direct for enhancement of sentence when actually appeal could have been filed by the State, complainant or the victim and has not been filed.

8. In the present case, neither the State nor the victim have filed an appeal for enhancement and therefore, having regard to the ratio of law laid down by the Supreme Court in the case of **Nagarajan (supra),** we are of the considered opinion that the order dated 02.11.2004 issuing notice to the accused for enhancement of sentence cannot be sustainable in eyes of law.

9. Accordingly, this Criminal Revision Application, as directed by the learned Single Judge of this Court, for enhancement of sentence, stands **dismissed**. Rule is discharged.

**(ILESH J. VORA,J)**

**(R. T. VACHHANI, J)**

Rakesh

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RAKESH MAHESHKUMAR KOSHTI(HC00950), Principal Pvt. Secretary, at High Court of Gujarat on 12/12/2025 16:59:22